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# The Canadian and Soviet Claims to the Arctic Sea Routes: A Comparative Study

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THE CANADIAN AND SOVIET CLAIMS TO THE ARCTIC SEA ROUTES:  
A COMPARATIVE STUDY

by

Raymond C. Bourgeois

A Major Paper Submitted in Partial Fulfillment  
Of the Requirements for the Degree of  
Master of Marine Affairs

UNIVERSITY OF RHODE ISLAND

1986



MASTER OF MARINE AFFAIRS

Major Paper of

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## ABSTRACT

The Arctic Polar Region is becoming increasingly important in terms of strategic operations, especially on the part of the superpowers. Surrounding the Arctic Ocean are two passages through which international navigation is possible. The Northwest Passage lies within Canada's coastline, and the Northeast Passage, within the Soviet Union's northern shores.

Both countries have advanced claims to the effect that the waters of these passages are under their respective exclusive jurisdiction; thus, they are claiming these as their internal waters. The US disagrees and maintains that the waters of those northern Arctic sea routes are international waters.

This paper discusses the Canadian and Soviet positions with respect to their individual claims; the basis of their international legal argumentation is also reviewed. The similarities and contrasts are highlighted in an analysis of both situations. A survey of American position is undertaken in terms of US stated policies and practice with regard to the Northwest and Northeast Passages.

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## CHAPTER ONE

### THE ARCTIC REGION

#### Introduction

The Arctic Region has evoked, for many and for years, the fanciful imagery of a cold, silent and perilous habitat in the distant far North. The natural serenity of this inhospitable environment was disturbed only by the regular hunting capers of the Inuit, the sporadic expeditions of explorers and adventurers, and the infrequent fact-finding missions of scientists.

In recent times, scientific research and technological developments have not only confirmed the resourcefulness of the Arctic Basin, but also have rendered its exploration less difficult. Bygone are the days when the harsh Arctic winds and the ice-clogged waterways made any traversings of the Canadian Northwest Passage or the Soviet National Northern Sea Route a formidable task and heroic event. Huge icebreakers are capable of plowing easily through six meters of multi-year ice, making navigation possible in this polar region.

The Northwest Passage (NWP) which Canada claims to be an intrinsic element of the Canadian Arctic Archipelago, and the Northeast Passage (NEP)<sup>1</sup> which borders the Soviet Arctic coastline, can serve as navigation routes linking, in both instances, the Atlantic and Pacific Oceans, and, thus, conferring upon both waterways their commercial and



strategic significance. However, both Canada and the Soviet Union contend that these passages are not international sea routes, but rather that they are within the countries' exclusive jurisdiction, as are the internal waters of a sovereign state.

The absence of an internationally accepted Arctic legal regime has thus left the Northern frontier vulnerable to territorial claims by the bordering coastal states. Further, the lack of acquiescence of the Arctic rim states towards each others' claims increases the probabilities for the once-ignored wasteland to become an arena of international conflict especially between the superpowers, the United States and the Soviet Union.

In order to gain a better understanding of the present state of the Canadian and Soviet claims to the waters of the Arctic Passages, this study begins with a brief review of the geopolitics of the Arctic.

### The Geopolitics of the Arctic

Over the last two decades, the Arctic Region has been the object of increasingly animated discussion related to either territorial delimitations or the rights of the Arctic rim states in this circumpolar region. The discovery of huge hydrocarbon deposits and the undertaking of subsequent exploitation activities, combined with the military significance of the Arctic, have heightened the interests of the superpowers as well as the concerns of the other Arctic rim states.

One of the most unique features of the Arctic Ocean is its frozen seawater which forms an ice cover at the North Pole:

The ice pack goes through a seasonal cycle of surface melt amounting to about one meter and bottom replenishment by a like amount ... [T]he central Arctic Basin is within the zone of perennial ice cover,<sup>2</sup> excepting only the relatively narrow coastal areas.

The periphery of the Arctic Ocean basin is shared in various lengths of coastlines by five countries: the USSR, Canada, the United States, Denmark (Greenland), and Norway, in that order<sup>3</sup> (see Map 1).

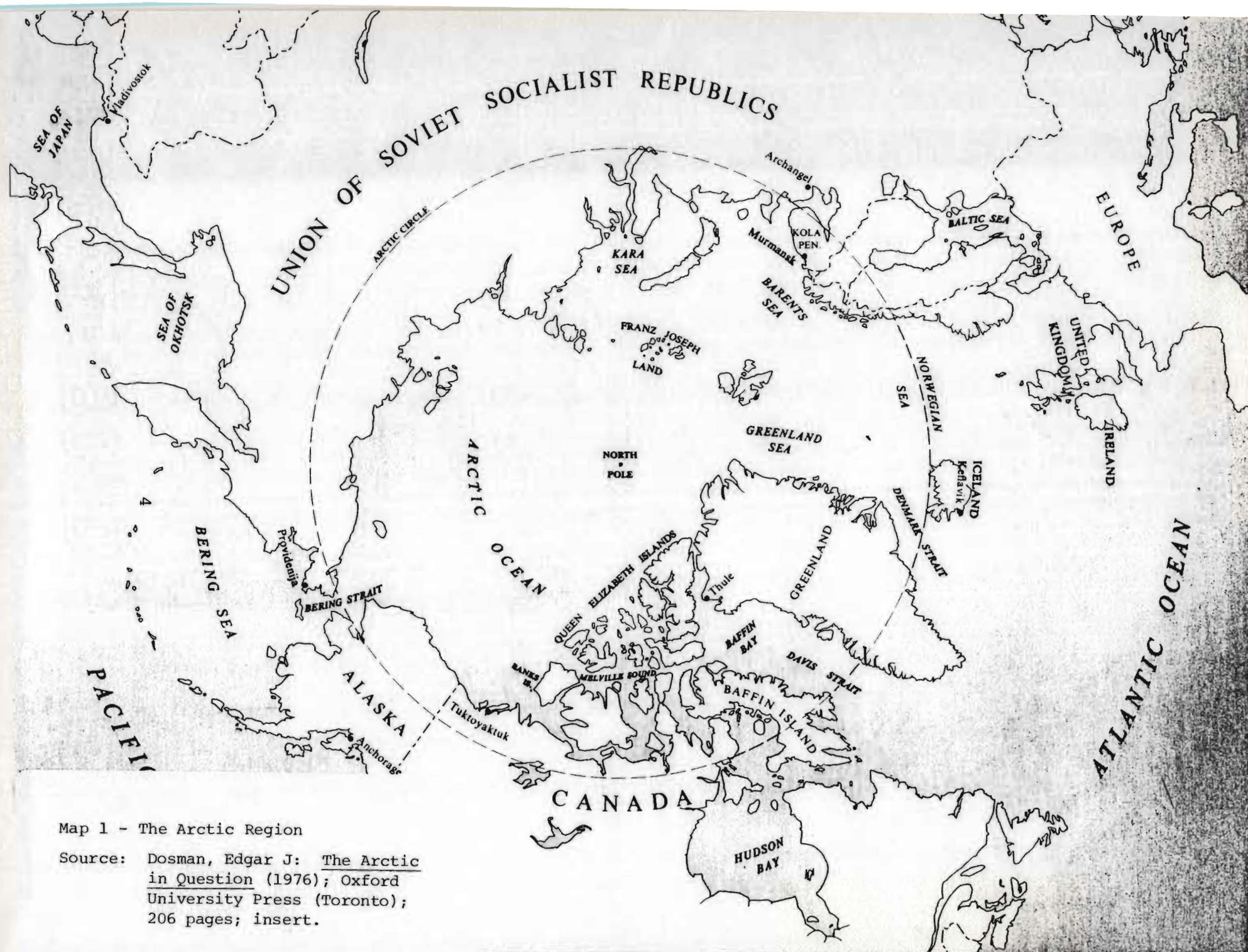
The Ocean Basin has kindled the interest of the bordering coastal states with its promise of considerable economic benefits through the exploitation of hydrocarbons resources. Further, the prospect of significant strategic advantage through the deployment of a sophisticated weaponry has caught the imagination of the superpowers:

Recent developments in military technology are rapidly turning the Arctic region into one of the world's most active and important areas of military operations... The Far North also is rapidly industrializing and therefore becoming<sup>4</sup> critically important to US and Soviet security.

Indeed, no longer is the Arctic considered a vast frozen and barren wasteland. Rather, it is seen as one of the world's most vital areas of strategic operations and one of the globe's richest reservoirs of oil and gas deposits.<sup>5</sup> The awareness of those vast natural resources together with the technological know-how to exploit them on a commercial basis have stirred the eagerness of Arctic rim states in their exploitation:

1.6-1.7 million barrels of oil are produced daily at Prudhoe Bay....Some estimates put additional recoverable reserves of oil in the North American Arctic at 50 billion or more barrels. The region's recoverable reserves of natural gas amount to more than 300 trillion cubic feet, though lack of a transportation<sup>6</sup> system has so far prevented commercial exploitation.





Map 1 - The Arctic Region

Source: Dosman, Edgar J: The Arctic in Question (1976); Oxford University Press (Toronto); 206 pages; insert.

While the Soviet Arctic may not be as well endowed with oil deposits, its "natural gas reserves may amount to 500 trillion cubic feet";<sup>7</sup> the Soviet Northern region has also huge deposits of gold, coal and other minerals. Already, the NWP is being contemplated as the waterway to be used for commercial Arctic hydrocarbon resources.<sup>8</sup> Insofar as the Soviet Arctic is concerned, the NEP has been in operation for quite some time.<sup>9</sup>

But foremost, the Arctic Region possesses an intrinsic military significance, for it is difficult to ignore the fact that the world's superpowers are practically at each others' doorstep in the Arctic: at the Bering Strait, Alaska is 57 miles from Eastern Siberia. Moreover, in terms of NATO considerations, the fact that the Denmark Strait and the Norwegian Sea are main exit routes for USSR vessels into the Atlantic Ocean does impact on the Alliance's defense strategies:

The north polar region is the shortest route the Soviet Union could take to the United States and Canada in the event of a war between the superpowers. It thus would be the favored route for long-range strategic aircraft deployed out of the Soviet Far East, East Siberia, and from the complex of bases in the Kola Peninsula, which houses the largest naval complex in the world.<sup>10</sup>

A major military consideration in this Region is the sophistication of strategic capabilities that has been developed in the recent decades. The US and USSR are equipped with high-flying aircrafts, missiles and nuclear-powered submarines that present the potential for mutual destruction. The dangers for ecological disasters are omnipresent, even if no actual military encounter takes place: accidents do happen.



### Statement of Purpose

The present study seeks to enlarge the understanding of the international legal basis upon which Canada and the Soviet Union rest their claims to their respective northern coastal sea routes, and to observe similarities and contrasts in their positions. Both the Canadian and Soviet claims will be studied in light of the provisions of the 1982 Law of the Sea Convention. The American position will be reviewed with respect to the stand taken by Canada and the Soviet Union, before the presentation of summary conclusions.

## CHAPTER TWO

### THE CANADIAN CLAIMS TO THE NORTHWEST PASSAGE

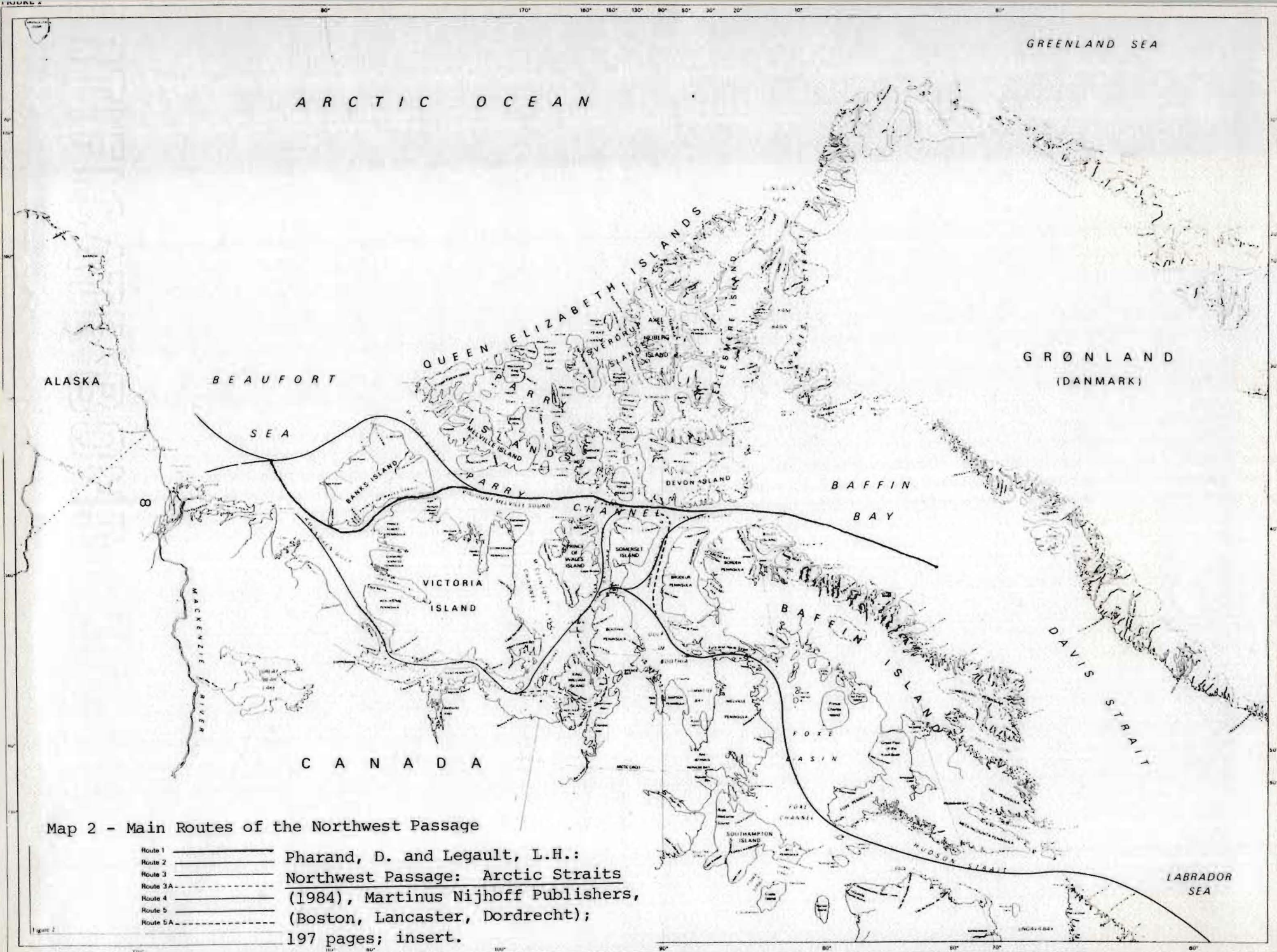
Canada encompasses an exceptionally large mass of waters and islands within the Arctic Circle, and has always maintained that the waters of the NWP are internal waters of Canada. The examination of the location and possible routes of the NWP, the traditional Canadian stand on this question as well as the international legal basis upon which these waters can be deemed "internal" or "international" will provide for a better understanding of the various issues related to the Canadian claims to the NWP.

#### The Northwest Passage: Location and Routes

The NWP is described as the waterway that "spans the North American Arctic from the Davis Strait and Baffin Bay in the east to the Bering Strait in the west."<sup>11</sup> It is the waterway that European explorers<sup>12</sup> sought for centuries and through which they could reach India and China. The NWP includes the water route within the Canadian Arctic Archipelago between the Beaufort Sea in the west and the Baffin Bay in the east.

There are five potentially navigable routes through the NWP and two variations of Routes 3 and 5, Route 3A and 5A (see Map 2). Except for Route 5 and 5A, the eastern entrance or exit is the Lancaster Sound,





which is 45 miles wide and 165 miles long, because it is where the ice conditions make it less difficult for navigation; while for the western entrance or exit, the M'Clure Strait (70 miles in width and 180 miles long) and the Prince of Wales Strait are the best suited. Route 3 enters or exits westward in the Gulf of Amundsen.

In considering which route to take, navigators need to take into account the geography, the ice conditions and the bathymetry. Experience had demonstrated that Route 1 (through Prince of Wales Strait) and Route 2 (through M'Clure Strait) offer the best courses for deep draft navigation. Further, the choice of waterway "depends on the size and strength of the vessels employed, on the nature and purpose of the voyage with general and local ice conditions in any given year."<sup>13</sup>

#### Canada's Position Over the Years

In discerning Canada's position on the issue of the nature of the waters of the NWP, it is important to take note of how Canada gained title to the Arctic Archipelago. In 1870 and 1880, Great Britain transferred to Canada its title over the Arctic islands.<sup>14</sup> Since then, sovereignty has been exercised, achieved and consolidated by official Canadian explorations and patrol expeditions in the early 1900's and by the conduct of state activities by government officials, especially by members of the Royal Canadian Mounted Police.<sup>15</sup>

Associated with the exercise of its sovereignty over the Arctic Archipelago was Canada's early espousal of the Arctic Sector theory. As early as 1904, the Canadian Department of the Interior maps included as



Canadian, all the land contained between the 141st western and the 60th eastern meridians to the North Pole.<sup>16</sup>

Thereafter, and on a regular basis, government officials, ministers and Prime Ministers have asserted, in unequivocal terms, Canada's sovereignty over the islands and waters of the Canadian Arctic Archipelago. In a speech to the House of Commons on May 15, 1969, the Rt. Hon. Pierre Elliot Trudeau declared:

Canada's sovereignty over its Arctic regions including the islands of the Arctic archipelago is well established... The Arctic islands and mainland form an integral part of Canada and we have extended to them the administrative, legislative and judicial framework which applies to all parts of Canada.<sup>17</sup>

And in particular reference to the Manhattan "incident,"<sup>18</sup> the Prime Minister quoted the words of a former minister of Northern Affairs, the Hon. Alvin Hamilton who, in 1958, had stressed that "the area to the north of Canada, including the islands and the waters between the islands and beyond, are looked upon as our own, and there is no doubt in the mind of this government [the Diefenbaker Government] that this is national terrain."<sup>19</sup>

More recently, in responding to questions on the Polar Sea voyage<sup>20</sup> through the NWP, the Prime Minister of Canada, the Rt. Hon. Brian Mulroney was no less direct:

There is no doubt that the Northwest Passage and that part of the world belongs to Canada... It is ours. We assert our sovereignty over it... [The Northwest Passage] belongs to Canada lock, stock and barrel... And the government of Canada will continue to ensure that that is the case.<sup>21</sup>

Should there have been any doubts as to where Canada stands in 1985 on the issue, that declaration unquestionably clarifies the government's

position: Canada considers the NWP waterway as part of its internal waters<sup>22</sup> and is prepared to undertake the measures required to ascertain that they are and remain so. The intent is therefore clear, and the implementation of appropriate and effective actions has been decided.<sup>23</sup>

The effect of the Canadian position is that when considered part of Canada's internal waters, the NWP and the airspace above it are subject to the total jurisdiction of the sovereign state. The resulting implications are that the sovereign state may grant or refuse authorization to any vessel wanting to navigate in those 'internal' waters.

There is no doubt as to the clarity and firmness of the position of Canada. In trying to elucidate the Canadian argumentation, a better comprehension can be sought through the review of pertinent legislative enactments and the consideration of several relevant international legal principles.

#### Relevant Legislative Measures to the Canadian Claims

The examination of the different elements constituting the Canadian legal position surrounding the Arctic claims warrants, in a first instance, a survey of Canadian state practice through domestic legislation. It should be noted that the 1969 Manhattan challenge hastened the Government to take legislative measures to asseverate the firmness of its position with respect to Canadian sovereignty over the waters of the Canadian Arctic Region.



The Arctic Waters Pollution Prevention (AWPP) Act of 1970 subjected foreign navigation to Canadian regulations governing the design, construction, manning and safety of vessels operating in Canadian waters, and provided for a pollution control of zone of 100 n. miles around the Arctic Archipelago.<sup>24</sup>

Shortly thereafter, followed the establishment of the 200 nautical mile Exclusive Fisheries Zone (EFZ) around Canada's eastern western and northern coastline (see Map 3). This jurisdictional claim did not require any new enactment since the enabling legislation, the 1970 Amendment to the Territorial Sea and Fishing Zones Act (TSFZ), provided for the extension of fishing zones or the territorial sea by way of Order-in-Council.<sup>25</sup> One was adopted in 1976 to establish the 200 miles EFZ which is obviously applicable in the Arctic as it is along the Atlantic and Pacific coasts of Canada. The Canadian decision to establish an EFZ conforms with widely accepted state practice, both in customary and international law.

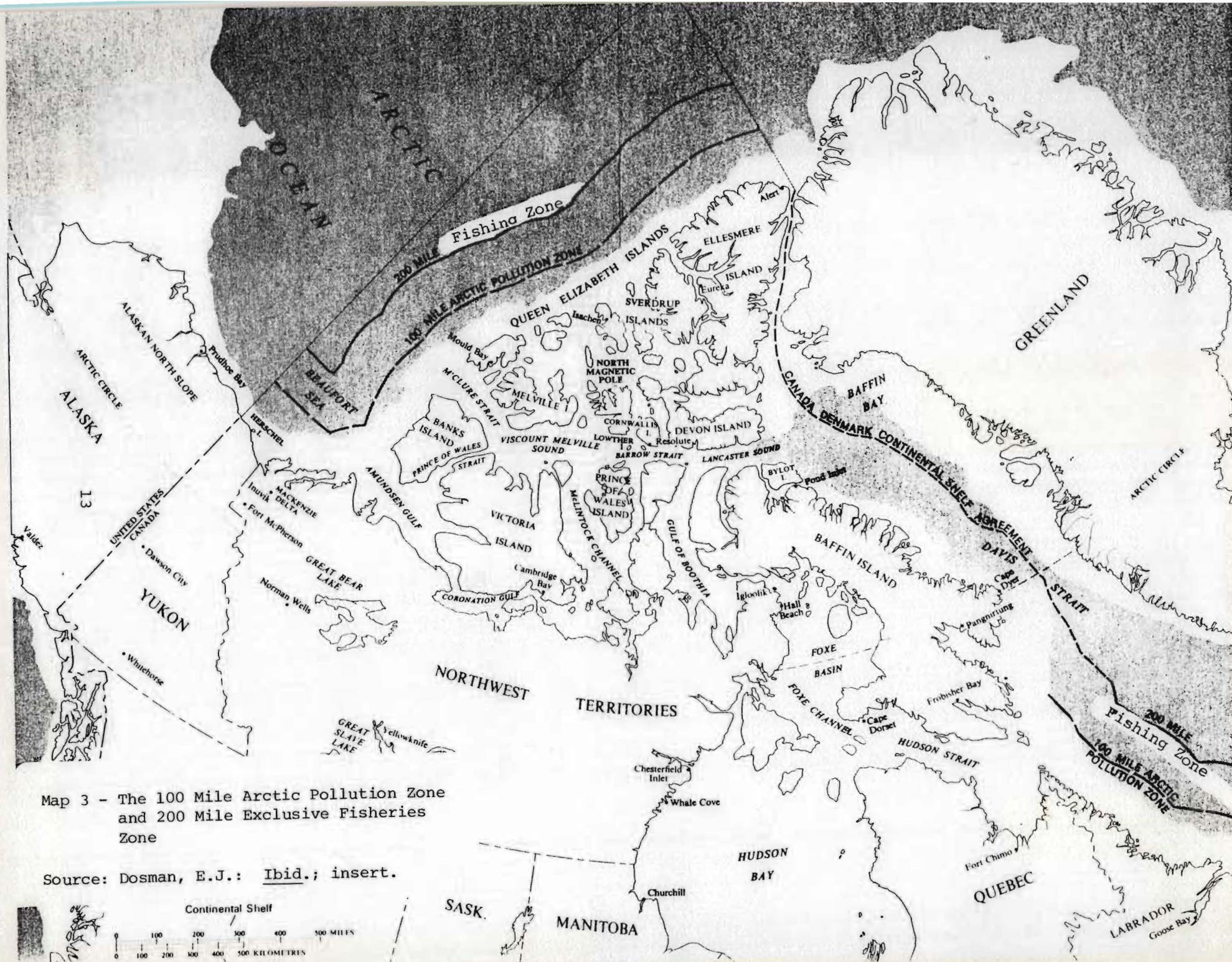
It is worthy to underline that the 1970 Amendment to the TSFZ Act does provide for a definition of 'internal' waters:

internal waters of Canada include any areas of the sea that are on the landward side of the baselines of the territorial sea of Canada.<sup>26</sup>

This provision has raised discussions among legal experts as to its meaning in the absence of baselines and in light of the definition of internal waters as circumscribed in the amended Customs Act of 1970:

internal waters of Canada means (a) any areas of the sea that are on the landward side of the baselines of the territorial sea of Canada, and (b) the inland waters of Canada.<sup>27</sup>







The problems relate to "means" and the "absence of baselines": if "means" implies "to be" and there are "no baselines", then, "there can be no waters that fit within the Customs Act definition of internal waters of Canada,"<sup>28</sup> except inland waters.

Insofar as the TSFZ definition is concerned it is wider in scope, as the word "include" is utilized: "the internal waters of Canada include waters on the landward side of the baselines, and a fortiori can also include waters where no baselines have been made."<sup>29</sup> Further, the establishment of baselines would thus remove any ambiguity.

More recently, on September 10, 1985, the Government of Canada announced its intention to adopt immediately a Canadian Laws Application Act, which extends "the application of Canadian civil and criminal law to offshore areas",<sup>30</sup> including the Arctic. Furthermore, on the very same day, the Government, by virtue of an Order-in-council cited as Territorial Sea Geographical Coordinates (Area 7) Order, announced the establishment of straight baselines<sup>31</sup> around the Arctic Archipelago. This measure will be discussed at greater length under a separate heading later in this chapter.

These measures constitute Canada's reassertion of its Arctic waters' claim over the last sixteen years. They were brought forth as a result of the 1969 Manhattan incident and the US Polar Sea challenge of August 1985; they emphatically state the Government's intent to maintain exclusive jurisdictional control over the waters of the Arctic Archipelago.

Politicians, government officials and publicists have made pronouncements over the years in relation to the international legal

basis of Canada's Arctic claims. The Arctic Sector theory presented itself, at the early stages, as the empowering notion to sustain the Canadian state's claims.

### Arctic Sector Theory

In the beginning of the twentieth century, the sector theory emerged as the effective tool to elude the internationally recognized requirement of "effective occupation" by a sovereign state to the barren polar region areas. It was first propounded by a Canadian Senator, Pascal Poirier, in a speech before the Senate in 1907:

We have a fourth claim, we can establish a fourth ground for ownership of all the lands and islands that extend from the arctic circle up to the north pole. Last year, I think it was, when our Captain Bernier [a noted arctic explorer of that day] was in New York, a guest of the Arctic Club, the question being mooted as to the ownership of the Arctic islands, it was proposed and agreed - and this is not a novel affair - that in future partition, of northern lands, a country whose possession today goes up to the Arctic regions, will have a right, or should have a right, or has a right to all the lands that are to be found in the waters between a line extending from its eastern extremity north, and another line from the western extremity north. All the lands between the two lines up to the north pole should belong to the country whose territory abuts up there... From 141 to 60 degrees west we are on Canadian territory.

And the Senator had a premonition of the jurisdictional problems that could arise:

...This partition of the polar regions seems to me to be the most natural, because it is only a geographical one. By that means difficulties would be avoided, and there would be no cause for trouble between interested countries. Every country



bordering on the Arctic regions would simply extend<sup>32</sup>  
its possession up to the North pole.

The sector theory has not, however, received any enthusiastic support from international legal experts. Nonetheless, it has been referred to by officials and politicians over the years. As Canadian Ambassador to the United States in 1946, - and later Prime Minister of Canada - the Right Honourable Lester B. Pearson stated that the Canadian claim

includes not only Canada's northern mainland but the islands and frozen sea north of the meridian<sup>33</sup> of its east and west boundaries to the North Pole.

An official sector claim to sovereignty over northern ice and waters has never been made. It should be noted that the Canadian Arctic sector "has appeared on Canadian maps of the North from 1904 to the present," and that "this principle has been considered by the government of Canada as a possible basis for dividing the continental shelf it shares with Denmark off the west coast of Greenland and with the United States in the Beaufort Sea."<sup>34</sup>

The Right Honourable P.E. Trudeau did assert that "the sector theory applied only to the continental shelf and the seabed, not to water and ice."<sup>35</sup> Canada has persistently appeared to claim title to the ice, but in an obscure and ambiguous manner. On April 29, 1970 the Director of Legal Service in External Affairs asserted that "the theory that ice is part of the territory has certainly not been abandoned nor forgotten."<sup>36</sup>

Nonetheless, Canada has advocated a claim "to a maritime boundary on its west at the 141 degree west longitude meridian", also the Canadian outer continental shelf program and the 1970 AWPP refer to "the 141st meridian" for their application.<sup>37</sup>

It is interesting to note that a Canadian government publication, dated 1980, refers to the sector theory in the following terms:

Senate Pascal Poirier enunciated his sector principle or theory in the Canadian Senate on February 20, 1907, thus articulating in clear terms a proposition that Captain Bernier had been voiding for some time, and at the same time giving it what is still regarded as its classic expression - It soon became at least semi-official Canadian policy."<sup>38</sup>

Insofar as a basis for the Canadian claims, and since the sector theory has neither been denied or invoked officially by successive Canadian governments, it may be why some publicists give the following interpretation:

The position of the present government seems to be that the sector theory should be held in reserve as a possible support, and that nothing should be done to undermine any possible legal value it might have."<sup>39</sup>

Cognizant of the fact that the sector theory has not received international acceptance, notably through the UNLOS III deliberations, the Canadian government and publicists have put forth other legal bases of reasoning to substantiate the Canadian Arctic waters claim, notably the basis of history.

#### Historical Basis

Canadian experts think that Canada does have a right of title to the NWP passage waters on the basis of history, and that US challenges endanger Canada's position:

It is submitted that...sufficient time has endured for Canadian sovereignty over the entire Canadian Arctic as far as the North Pole, and embracing land island, sea and packed ice. Had any question arisen say five years before the Manhattan effort, it is little doubt



that the world at large would have recognized Canada's historic title to the whole area.<sup>40</sup>

It is also the thinking of the Government of Canada. The Legal Adviser's office in the Department of External Affairs offered in December 1973, the following opinion:

the waters of the Canadian Arctic Archipelago are internal waters of Canada, on an historical basis although they have not been declared as such in any treaty or by any legislation.<sup>41</sup>

While explaining the implications of the new transit passage regime for international straits as discussed at UNCLOS III, the External Affairs Minister, in May, 1975, appears to support this contention:

As Canada's Northwest Passage is not used for international navigation and since the Arctic waters are considered by Canada as being internal waters, the regime of transit does not apply to the Arctic.<sup>42</sup>

Also Canada has claimed that the waters of the Gulf of St. Lawrence are internal waters under complete Canadian jurisdiction.<sup>43</sup>

Again more recently, the External Affairs Minister in his statement on Arctic sovereignty declared in the House of Commons, when he was announcing the establishment of straight baselines, that "these baselines define the outer limit of Canada's historic waters".<sup>44</sup>

To establish claims on the basis of history, it is important to seek precedents in customary law or in state practice, and to examine the relevant provisions of the 1982 Convention on the Law of the Sea; these will be reviewed in chapter four.

### Straight Baselines Regime

The establishment of straight baselines (see Map 4) around the Arctic Archipelago<sup>45</sup> has the effect of surrendering all waters and searoutes, contained within the perimeter thus created, under the complete jurisdiction of the sovereign state. Such measures make the waters of the NWP part of the internal waters of Canada.

The legal basis of such action is derived from the judgment of the International Court of Justice in the Anglo-Norwegian Fisheries Case,<sup>46</sup> when Norway was allowed to draw straight baselines around its archipelago known as the skjaergaard. The straight baseline system was upheld by the Court as being applicable to a state with a deeply indented coast or "if there is a fringe of islands along the coast in its immediate vicinity."<sup>47</sup>

As a result of the Norway-UK Court ruling, three basic criteria establishing straight baselines were retained in the 1958 Convention on the Territorial Sea and the Contiguous Zone and the 1982 Convention on the Law of the Sea.<sup>48</sup> The straight baselines must not depart to an appreciable extent from the general direction of the coast, implying that any deviation must not create a distortion of the general direction.<sup>49</sup> Also, the enclosed sea area had to have been so closely linked to the mainland so as to be subject to the internal waters regime.<sup>50</sup> And finally, the establishment of such baselines must take into account "the economic interests peculiar to the region concerned, the reality and importance of which are clearly evidenced by long usage."<sup>51</sup>







The application of those criteria can give credence to the straight baselines drawn around the Canadian Arctic Archipelago. A global examination of a small-scale map as in Map 4 reveals no major distortion of the general direction of the coast. Insofar as the linkage of the enclosed waters to the land is concerned, it is important to bear in mind that in the Norwegian case, the ratio of the area of water to that of the land was 3.5 to 1. In the Canadian Arctic Archipelago situation, the estimated ratio is .882 to 1.<sup>52</sup> Finally, the dependence of the Inuit population on fishing, hunting and trapping in that frozen milieu constitute sufficient "peculiar economic interests" to warrant such straight baselines,<sup>53</sup> especially at the Amundsen Gulf and Lancaster Sound areas.

Although the Canadian Arctic Archipelago is not what could be called "a fringe of islands", it does form nonetheless a single unit of islands and headlands, broken by large indentations of bays and gulfs, woven together by straits and sounds, and held in a unit by the frozen ice of the Archipelago, which altogether forms an integral part of the Canadian coast.<sup>54</sup> Some experts hold the view that the "fringe of islands" notion needs not be interpreted in the strictest literal sense, especially in light of state practice:

The [Canadian Arctic] archipelago might not constitute a 'fringe of islands along the coast', if the conventions are interpreted literally, but such an interpretation would not be in accord with the practice of states...Professor O'Connell lists some eighteen coastal archipelagos where straight baselines were used and which constitute very doubtful 'fringes' of islands.<sup>55</sup>

The implication of the Canadian government decision to go forward in establishing straight baselines has the effect of enclosing all waters of the Canadian Arctic Archipelago, including those of the NWP, as internal waters. Further, both the 1958 and the 1982 conventions provide that where "the effect of enclosing as internal waters areas which had not been previously considered as such, a right of innocent passage shall exist in those waters."<sup>56</sup> Canada has never recognized the NWP as international waters, but Canada has acknowledged officially its intention of maintaining open the NWP to international navigation: "to close off those waters and deny passage to all foreign sovereignty, as some commentators have suggested, would be as senseless as placing barriers across the entrances of Halifax and Vancouver harbours"<sup>57</sup> but under stringent environmental protection regulations:

Canada continues to maintain...that any navigation in the Passage will be subject to Canadian control and regulation for safety and environmental purposes.<sup>58</sup>

### Conclusion

The succinct review of the location and strategic importance of the Northwest Passage, the more detailed study of the applicability of international legal principles to Canada's longstanding claims of sovereignty over the Passage and its waters, and the survey of Canada's latest course of action in asserting its sovereignty, have not only highlighted the complexity of some of the issues involved, but also attempted to assess the validity of Canada's "controversial" claims.



But for the Government of Canada, sovereignty over the Arctic land, water and ice, including those waters of the NWP, remains indivisible and unquestionable:

It embraces land, sea, and ice. It extends without interruption to the seaward - facing coasts of the Arctic islands. These islands are joined and not divided by waters between them. They are bridged for most of the year by ice. From time immemorial Canada's Inuit people have used and occupied the ice as they have used and occupied the land.

The policy of this government is to maintain the natural unity of the Canadian Arctic Archipelago, and to preserve Canada's sovereignty over land, sea, and ice undiminished and undivided.

The Arctic is a heritage for the people of Canada. They are determined to keep their heritage entire.<sup>59</sup>

Canada has successfully defended the uniqueness of its Arctic Region before the international community. The inclusion of article 234 on "ice-covered areas" in the 1982 Convention (see Appendix E) gives recognition to its 1970 AWPP legislation. Coastal states can introduce stringent measures governing marine pollution from vessels in such fragile and unique environment, and that, within the limits of their 200 nautical miles exclusive economic zone.

Viewed in the context of the most recent US Polar Sea voyage, it follows that the "ice-covered areas" provision may not have afforded Canada with the required protection for its ecologically unique region. The straight baselines were drawn to establish clearly Canadian sovereignty over the waters of the Arctic Archipelago, protecting not only the Arctic environment, but also the Inuit population and its national security interests. The Government of Canada had no choice but to act. For the protection of the sovereignty and the territorial integrity of the state is inherent to the mandate of any government.

### CHAPTER THREE

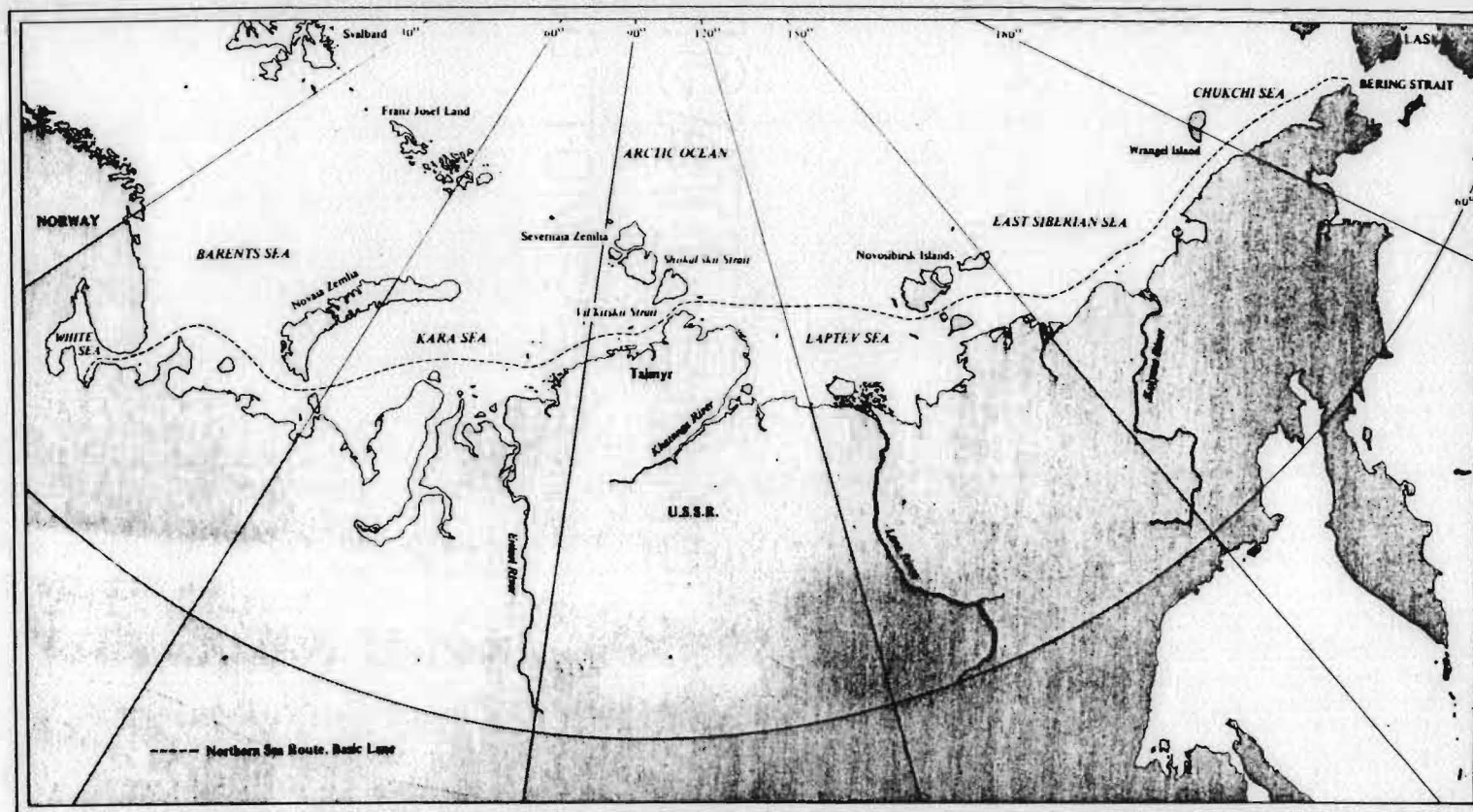
#### SOVIET CLAIMS TO THE NORTHEAST PASSAGE

The Soviet Union is the circumpolar state with the longest Arctic coastline, along which lies the National Northern Sea Route. This chapter will review the various facets of the Soviet claims, examining first the nature and location of the Northeast Passage. The Soviet position, with its resulting implications, will precede a discussion of the different components of the USSR legal basis for its claim of internal waters status for the NNSR.

#### The Northeast Passage: Its Location and Characteristics

The National Northern Sea Route (NNSR) is located in the bordering Arctic waters of the Soviet Union's northern coastline and stretches between the 32°04'35" East to 168°49'30" West.<sup>60</sup> The NNSR is a navigable route which is comprised of a series of straits between the Barents, Kara, Laptev, East Siberian and the Chuckchi Seas. The Northeast Passage thus links the Pacific Ocean (through the Bering Strait at the Chuckchi Sea) with the Atlantic Ocean (through the Norwegian Sea adjacent to the Barents Sea). (See Map 5) It includes the straits of Karskiye Vrota (between Novai Zemlia Island and Ostrov Vagach Island), Vil'kitskii (between Severnaia Zemlia and the Polustrov Peninsula), those of Sanikova, and Dmitriia Lapteva (joining the Laptev





Map 5 - The National Northern Sea Route

Source: Butler, Ibid.; p. 4.

and East Siberian Seas), and the Longa Strait (between Wrangle Island and the Northeastern peninsula) leading to the Bering Strait via the Chuckchi Sea.<sup>61</sup> The Soviet National Northern Sea Route, also known as the Northeast Passage, has also been described as follows:

Starting from Murmansk, the main lane runs through the Barents Sea, passing North of Novaya Zemlya, and proceeds across the Kara Sea into the Vil'kitsky Straits of Severnaya Zemly; ... the route traverses the Laptev Sea and doubles into a southern lane through the Dimitri Laptev Strait, and into a northern one through the Sannikov Strait, both of which lead into the East Siberian Sea. There, the route divides again to pass on either side of the small Medvezhy Islands; it then resumes as a single lane along the coast south of Wrangle Island, into the Chuckchi Sea and through the Bering Strait.<sup>62</sup>

Navigation in the NEP depends upon the geographical characteristics of the straits themselves. Since full Soviet data and charts are not readily made available, foreign attempts to navigate the NNSR need to rely on sailing directions compiled by the U.S. Naval Oceanographic Office and the Hydrographer of the Royal Navy (UK).<sup>63</sup> Further, considerations for navigation require knowledge of the depth of the waters, of whether or not ice is present, of the thickness of the ice, and the width of straits involved. Reality is that there are persistent difficult ice conditions that make it advantageous and almost compulsory to go through the Vil'kitskii Straits,<sup>64</sup> which are considered by the Soviets as the internal waters of the USSR.

#### The Soviet Position Over Years

In examining the Soviet claims in the Arctic Region and those relating to the NNSR in particular, it is imperative to focus on a



series of Soviet doctrinal theories that have been developed over the years:

Although the practice of the USSR indicates that it considers the Northern Sea Route a national route, it has not adopted any law to that effect; it has, however, adopted a number of laws and decrees relating to its jurisdiction over certain lands and boundary waters which have relevance to that sea route.<sup>65</sup>

In other words, the "Soviets have constructed a body of doctrinal claims which are at variance with Western norms of international sea law on significant issues."<sup>66</sup> These Soviet claims and positions have been embodied in legislative enactments and policy pronouncements. In 1909, Imperial Russia claimed a 12 mile jurisdiction off its coastline for purposes of custom control. Shortly after the Revolution, the USSR established, in 1921, a 12 mile fishing zone; in 1926, the Soviet government decreed the Arctic sector theory principle. Subsequently, there were other measures introduced. It could be argued that the legislative measures of the last twenty years were implemented as a reaction to the American challenges of the National Northern Sea Route. In the 1967 US attempt, the Soviet position was unequivocal and firm, and was relayed to the US vessel seeking to go through the Vilkitskii Straits:

...Vilkitskii Strait is within USSR territorial waters therefore sailing of any foreign navy ships in the strait is subject to regulations of safety of USSR frontiers. For passing the strait according to the above regulations military ships must obtain preliminary permission of USSR Government through diplomatic channels one month before expected date of passing.<sup>67</sup>



The Soviets deny that the NNSR waters are international waters, affirm that they are internal, and that these waters are under the complete exclusive jurisdiction of the state.

For this reason, any attempt to better understand the USSR position requires the scrutiny of both the legislative enactments, as well as the prevailing Soviet international legal opinions and concepts, since official Soviet statements are seldom made. It is through a series of overlapping legal doctrines that the Soviet Union has formulated the position that the National Northern Sea Route is not only a national commercial waterway that belongs solely to the USSR, but a passageway which is open to foreign shippers only on Soviet terms and conditions, including Soviet navigational directives and the payment of transit fees.<sup>68</sup> The Soviet Union thus considers the Northeast passage as a national route under the total control of the state.

#### Soviet Legislative Measures

Prior to the Soviet ratification of the 1958 Convention on the Territorial Sea, the USSR established in 1960, a twelve mile territorial sea for the first time; the 1960 Soviet statute was amended in 1971.<sup>69</sup> Also, in 1965, the USSR Ministry of the Maritime Fleet rendered mandatory, "icebreaker escort or pilotage 'for all vessels'" in the Vilkitskii and Shokal'skii straits and in the Sannikov and Dmitriya Laptev straits.<sup>70</sup> In 1971, the Soviet Council of Ministers formally empowered the Administration of the Northern Sea Route "to regulate the movement of vessels"<sup>71</sup> in the Northeast Passage, to "fix areas where icebreaker escorts and/or pilot are obligatory."<sup>72</sup>

As noted above, at the beginning of the twentieth century, enactments dealing with the emerging problems of sea control were adopted and enforced. Most recently, there have been legislative enactments decreed by the Soviet authorities to update its domestic legal regime to the new 1982 Convention. The 1983 Rules for Navigation and Sojourn of Foreign Warships in Territorial and Internal Waters and Ports of the USSR<sup>73</sup>

The 1983 Rules allow for warships to travel through Soviet waters (territorial or internal) according to stated USSR conditions: foreign warships a) will fly their state flag (art. 2); b) observe "radio communications, navigational, port, customs, sanitary, and other rules (art. 4); c) will immediately notify the administration of the nearest Soviet port in the case of forced non-observance of rules (art. 4); d) must use Soviet pilotage and icebreaker services (art. 5); e) must avoid any areas prohibited for navigation by the USSR as announced in Notices to Mariners (art. 6); f) must observe rules, the failure of which will trigger a Soviet request to comply and, in the absence of compliance, a Soviet demand to leave the limits of the USSR territory (art. 7).

Further, the 1983 Rules allow for innocent passage of foreign warships in USSR territorial waters (art. 8) as long as "it does not breach the peace, good order, or security of the USSR" and it is "continuous and expeditious" (art. 10). The conditions for innocent passage (art. 11) are in line with those of the 1982 Convention of the Law of the Sea, and Routes and Traffic Separation Scheme need to be observed along routes "ordinarily used for international navigation" in the Baltic Sea, in the Sea of Okhotsk, and in the Sea of Japan (art. 12).



However, prior authorization for foreign warships is required to travel in Soviet internal waters, 30 days in advance, except when "heads of state or governments" are on board, in which case a seven day prior notification is required, or when it is a "forced entrance" which is deemed to be due to emergencies (art. 16).

Not only did the USSR revise its 1983 Rules of Navigation for Warships, but it introduced legislation to establish an exclusive maritime zone of 200 nautical miles, within which area special environmental measures will be enforced. The Presidium of the Supreme Soviet Decree Establishing a 200 n. mile zone was enacted on February 29, 1984, and its implementation will entail the enforcement of various measures:

The USSR in its EEZ proclamation indicates that in connection with specific regions of its EEZ, for technical, resource use, and environmental reasons, special obligatory measures will be taken to prevent pollution from vessels. Such measures will include those relating to unspecified navigation practices and will be established by the Soviet Council of Ministers.<sup>74</sup>

Moreover, the Soviet Union has taken action to solidify its claims that the waters of the NSSR are internal by establishing straight baselines; these measures will be discussed separately at the end of this chapter.

#### The Sector Theory Principle

The Soviet Union first espoused the sector principle in 1926, with the Decree of the Presidium of the Central Committee of the USSR by virtue



of which the Soviet Union claims sovereignty over all lands and islands within the Soviet Arctic sector:

All lands and islands both discovered and which may be discovered in the future, which do not comprise at the time of publication of the present decree the territory of any foreign state recognized by the Government of the USSR, located in the Northern Arctic Ocean, north of the shores of the Union of Soviet Socialist Republics up to the North Pole between the meridian 32° 04' 35" E. long. from Greenwich, running along the eastern side of Vaida Bay through the triangular marker on Cape Kekurskii, and the meridian 168° 49' 30" W. long. from Greenwich, bisecting the strait separating the Ratmanov and Kruzenstern Islands of the Diomede group in the Bering Sea, are proclaimed to be territory of the USSR.<sup>75</sup>

This Soviet claim excludes lands claimed by recognized foreign states, and refers notably to the Svalbard Islands, which is a Norwegian territory.<sup>76</sup> Further, it should be noted that the 1926 Decree does not state clearly that the claim is based on the sector theory, while it would appear that, in fact, it is. The meaning of "territory" is not defined, although subsequent interpretations by Soviet jurists have been rather liberal. The interpretation given is that "territory" includes all maritime areas, water and ice, within the delimited sector:

Must the rights of the USSR be viewed and limited only to the few islands, and that the rest of the Arctic with its floating and fast ice-fields, inland lakes, straits...[be] left by the Soviet government for unlimited exploitation by any of the capitalist plunderers...? Obviously not, for such a conclusion would be in conflict with the whole idea of the Decree ...[which] must be understood to include... also ice formations and the seas surrounding them, for otherwise the polar sector adjacent to the USSR would have to be considered as an open sea with all the consequences resulting from such an interpretation.<sup>77</sup>

Further, Soviet legal experts, notably Lakhtin in 1928, have put forth the notion that the sector theory is a widely accepted principle

requiring an "international conference to negotiate the final coordinates and select the ultimate designation"<sup>78</sup> for each polar sector.

Notwithstanding the various interpretations of the sector theory by Soviet jurists, the Soviet Government has opted to refrain from making any firm commitment as to its official position regarding whether or not the USSR endorses the all-encompassing claims that the applied Soviet "sector theory" in the Arctic would include:

Why then do the Soviets continue to emphasize their 1926 sector claim? No one is disputing their sovereignty over all the lands and the islands in their sector, and there are no unknown islands remaining to be discovered within it. The reason behind the Soviet policy is probably a desire to keep alive the concept of a 'Soviet sector.' By stressing the concept of a sector exclusively containing Soviet lands and islands, the Soviets are keeping the option of going a step further and declaring that the Arctic waters containing Soviet lands and islands are Soviet waters.<sup>79</sup>

The "keep-the-options-open" approach is thus central to the official Soviet decision to remain silent on the sector theory principle insofar as Arctic region is concerned. Inherent in the sector theory is that all lands, islands, and waters lying within such a sector are under the total and sole jurisdiction of the sovereign state; the effect is to render any waters and waterways within the sector part and parcel of a state's internal waters.



### Territorial Waters

The Soviet Union has established a 12 n. mile territorial sea prior to its ratification of the 1958 Convention on the Territorial Sea and Contiguous Zone.<sup>80</sup> The Statute on the Protection of the State Border of the USSR,<sup>81</sup> enacted in August 1960, refers to the territorial sea as "coastal sea waters."<sup>82</sup> It has had the ultimate result of closing off the Vil'kitskii Strait and the Karskiye Vorota Strait, which measure respectively 22 1/2 miles and 11 miles in width,<sup>83</sup> and which are essential waterways for vessels using the NNSR:

The Soviet Union has been able to control the Northern Sea Route (Northeast Passage) by claiming a 12-mile territorial sea...The 12-mile territorial sea boundary and the difficulty of negotiating ice passage without Soviet support in the Barents Sea/Svalbard Archipelago<sup>84</sup> have effectively nationalized the route.

Further, the 1960 Soviet Statute required prior authorization for foreign warships to transit in its territorial waters and for research vessels to carry out scientific activities. Internal Soviet legislation was amended accordingly<sup>85</sup> To make use of any waterways within the territorial waters of the USSR, a foreign state had to therefore make a request for permission to do so, and not merely give a simple notice of intentions.<sup>86</sup> At least with respect to military vessels it was therefore quite clear that the Soviet interpretation, though its domestic legislation relating to its territorial waters, and the implications thereof, are similar or akin to that of "internal waters," over which a state has sovereign rights and in which there is no right of innocent passage:

Although the Soviets claim to adhere to Article 16.4 of the Convention on the Territorial Sea and the Contiguous Zone, which grants the right of innocent passage through 'international straits, they have apparently taken the position that the straits along the Soviet Arctic coastline cannot be construed as international straits.'<sup>87</sup>

#### Internal Waters and Closed Seas

According to international law, the internal waters of a coastal state are under the complete control and jurisdiction of the state, and no "innocent passage" is allowed through those waters.<sup>88</sup> In the case of the USSR, it is most interesting to observe what the state considers as internal waters: Soviet waters of ports, "of bays, inlets, coves and estuaries," landward of straight baselines are internal waters, as well as those "waters of bays, inlets, coves, and estuaries, seas and straits historically belonging to the USSR."<sup>89</sup> The Soviet Union thus claims as "internal" the waters of those gulfs, inlets and bays whose seaward breadth are less than 24 n. mile according to conventional law, and also many other water areas of gulfs, straits and seas on "historical" basis:

In the Arctic, the Soviet Union has designated numerous coastal water areas as its 'internal waters,' based on both geographic and historical criteria.<sup>90</sup>

Another feature of Soviet international legal rationale is that the Soviet Union has claimed the Kara, Laptev and East Siberian Seas as land-locked seas, on the basis of "mare clausum" or closed seas:

A 'closed sea' regime, by definition, provides for the unrestricted passage of all vessels of the coastal states, but excludes any transit of warships of any non-coastal state..., and any sea, regardless of expanse, may be rendered closed by the concurrence of



all the coastal states which border the sea...The Soviets define closed seas as 'seas which essentially constitute routes leading to the ports and shores of coastal states and are connected to the high seas through a series of straits.'<sup>91</sup>

The development of the closed sea doctrine by the USSR has been perceived by observers as a deliberate effort to consolidate Soviet strategic interests in the Arctic:

The closed sea doctrine...is an attempt to establish a legal precedent for excluding...<sup>92</sup> naval powers from the approaches to Soviet territory.

However, scientific expeditions by the US in the early 1960's in those seas would make it difficult for the USSR "to discharge the burden of proving that some of the Siberian Seas constitute historic waters."<sup>93</sup>

#### Historic Waters

The last three decades have witnessed greater Soviet development of the historic approach to claims. It would appear that the historical basis would supersede any attempt to sustain claims on the basis of the sector theory, which, as has been mentioned, has not been relinquished or abandoned by Soviet authorities. Indeed, international legal experts seem to view the Soviet reliance on historical factors to establish claims as just another aspect of a global Soviet Arctic claim, the motivation of which lies in a variety of interests and considerations:

The 'historic waters' approach to the legal status of the polar seas, as developed in Soviet doctrine, is an amalgam of arguments resting upon historical discovery, physical characteristics of the seas, economic development of the region, and strategic considerations.<sup>94</sup>

Moreover, in light of the International Court of Justice ruling that the Indrelia sea route was part of Norway's internal waters on the basis of history and geography, Soviet legal experts have used the 1951 Fisheries Case as support for their historic seas claims, and more particularly, in reference to the Northeast passage:

The Northern Sea Route passing through the purely Arctic Seas of the Soviet polar sector is our historic national sea route, created by the stubborn labor of the Russian<sup>95</sup> people over a period of several centuries.

and "the Northern Sea Route is a Russian national route, in many ways identical to Norway's Indrelia route."<sup>96</sup>

While some Western specialists contend that the USSR would have much difficulty in sustaining historical proof due to US scientific missions in those Soviet seas,<sup>97</sup> Soviet legal authorities maintain that the "Arctic seas along which the Northern Sea Route passes and the straits located within the seas have never been used without the knowledge and provision of special Soviet services,"<sup>98</sup> and that, therefore, these are historic waters.

#### Straight Baselines Regime

The international legal basis for establishing a straight baseline system have been dealt with in the previous chapter under an identical sub-heading.

In what appears to have been a two-fold operation, the USSR has proceeded, in the very recent years, to define the basepoints for the drawing of straight baselines around its extensive coastline. Phase One



was initiated on February 7, 1984 with the adoption by the USSR Council of Ministers of a decree which identified the list of geographic coordinates of points so as to enable the establishment of a straight baseline regime.

The Decree declares that from the listed basepoints will be measured "the breadth of the territorial sea, exclusive economic zone and the continental shelf of the USSR off the continental coast and islands of the Pacific Ocean, the Sea of Japan, the Sea of Okhotsk and the Bering Sea."<sup>99</sup>

Less than a year later, phase II became operational.

On January 15, 1985, the Soviet Union by virtue of a Decree of the USSR Council of Ministers approved a twenty-five page document listing the geographic coordinates of basepoints which established a straight baseline system along the coastline of the Soviet Union, including the Soviet Arctic Region. The USSR declaration is straightforward and determines the

geographic coordinates of points from which the breadth of the territorial sea, exclusive economic zone and the continental shelf of the USSR off the continental coast and the islands of the Arctic Ocean and the Baltic and Black Seas.<sup>100</sup>

Not only were the basepoints identified, but the Decree declared that the waters of White Sea, the Cheshskaya Bay and the Baydaratskaya Bay were internal waters, "as historically belonging to the USSR." This historical element is not invoked in the 1984 declaration.

The effect of such action encloses all sea routes and waters landward of those baselines as internal waters of the Soviet Union, and the sovereign state has absolute control over these waters. Obviously

in this case, the National Northern Sea Route is completely being subjected to the internal waters regime, and, consequently all rights of innocent passage that would normally exist may in the present circumstances be very limited if not nil. The NEP has now been not only under the total jurisdiction but in practice, it has been the USSR's state prerogative to allow and guide vessels interested in navigating in those waters.

### Conclusion

The descriptive survey of the Northeast passage, the review of the Soviet legislative measures as well as a closer scrutiny of the various concepts and notions relating to the status of the waters bordering the Soviet state, have constituted an attempt to determine the basis of the Soviet position with respect to its National Northern Sea Route.

In the last two years, the USSR has enacted a 200 nautical mile Maritime Economic Zone and established straight baselines along its coastline. It is through a series of legal doctrines and legislative enactments that emerges the Soviet stand: all waters bordering the Soviet state, be they bays, seas or straits are internal waters of the USSR, the Northeast Passage included, on the basis of history and of a series of Soviet precepts as found in legislation and in interpretations of Soviet international legal experts.



## CHAPTER FOUR

### THE CANADIAN AND SOVIET POSITIONS: AN ANALYSIS

Not only are there similarities between the claims put forth by Canada and the Soviet Union related to their respective northern waterways, but there is a striking resemblance in the international legal basis upon which are founded the positions of both states. There are also differences.

This chapter will compare and contrast the Canadian and Soviet positions, and examine these claims in light of the 1982 Convention on the Law of the Sea. But first, the review of considerations of a general nature is imperative.

#### General Considerations

Canada and the Soviet Union are both Arctic rim states; they have the largest coastal frontage on the Arctic Ocean, and their coastline is endowed with a northern sea route linking both the Atlantic and Pacific Ocean. Both claim the internal waters status for the waterways along their respective coasts. These are some commonalities between both states.

The major differences are of a different order. The USSR is a maritime state while Canada has the status of a coastal state<sup>101</sup> The Soviet Union's military capabilities can only be matched by those of the

United States which is also an Arctic rim state. Further, the USSR enjoys the status of a superpower within the international community of nations along with the US.

For its part, Canada has often been referred to as a middle-power; this nomenclature usually designates an industrialized state whose military strength is relatively average and whose economy is that of a developed state. However, the middle-power status can enable a state to be effective on the nation states' checkerboard of international politics.

Like other sovereign states, Canada and the Soviet Union have their own views to defend, positions to assert, agenda to follow and interests to protect. Both have ratified the 1958 Convention on the Territorial Sea and the Contiguous Zone and are signatory to the 1982 Convention on the Law of the Sea.<sup>102</sup> The new Law of the Sea established "a new umbrella empowering a great number of traditional and new entities to take legal measures in a complex new maritime world".<sup>103</sup> The new law-making treaty is a mammoth<sup>104</sup> document which spells out the rights and duties of the sovereign states in the conduct of their ocean related activities.

The interests of a maritime and coastal state may well vary; each will need to follow the appropriate course of action that will yield the best results, and that is usually dictated by the political and military power a state holds. It is therefore pertinent to examine in a first instance the respective approaches that the Soviet Union and Canada adopted during the UNCLOS deliberations, especially with reference to



the navigational issues of the Convention and the Arctic environmental concerns that were addressed.

### The Soviet Approach During UNCLOS III

It has been observed that the USSR position during the UNCLOS III deliberations differed considerably from the Soviet posture during the UNCLOS I discussions. This can be attributed to the USSR's emergence as a major civilian and military maritime power, resulting from the deliberate and massive build-up of its naval capabilities during the 1960's and early 1970's.<sup>105</sup>

In many areas of maritime interests during the UNCLOS III discussions, the USSR was cornered between ideological and pragmatic concerns: as a maritime power, the USSR was to argue for freedom of navigation along with the US. The Soviet and American interests in global mobility for their naval forces were quite identical: "concern over transit through international straits was a key impetus to Soviet-American coordination in convening UNCLOS III."<sup>106</sup>

Having maritime interests to sail the seas through the various strategic choke-points around the globe, the USSR supported and actively sought provisions for transit passage in international straits just like the United States would do:

Strategists of both the United States and the USSR recognized that the cooperation of the other side was necessary to secure key provisions at the conference. Each side had a clear interest in establishing rules that would allow competition on the seas without the kind of restrictions that might unduly tempt the use of force - for example to seize a closed strait or other strategic waterway.<sup>107</sup>

The joint US-USSR efforts entailed a favourable overall outcome on the international straits issue; the interests of maritime powers were protected and enshrined in conventional law.

However, when it came to the security implications of an open regime for the northern Arctic waters, the Soviets behaved differently:

The Soviet Union behaved like a maritime power at UNCLOS III ... except regarding the north. There they behaved like a coastal state...The Soviets in any case maintained that there are no 'international straits' in the waters of the USSR. Thus the transit passage called for in the Draft Convention, with its allowance for overflight and submerged navigation by submarines, would not be applicable to Soviet coastal areas.<sup>108</sup>

It is quite evident that the USSR was not ready nor willing to open its northern sea route to international navigation; the implications are that the Soviet Union while enhancing its maritime mobility around the globe was not prepared to give unconditional access to its shores to other maritime powers, notably to its greatest competitor, the United States.

Further, it is interesting to note that the USSR supported a coastal state, Canada, insofar as the ice-covered provision is concerned; this provision has often been referred to as the "Canada clause".

Basically, the Soviets managed to maintain their global mobility on the world's oceans by securing the transit passage provisions for international straits, to protect their security interests in waterways close to their homeland, to close off their northern coastal area to foreign navigational fleet<sup>109</sup> and to reinforce their Arctic position



with their support for the inclusion of the ice-covered areas provisions.<sup>110</sup>

### The Canadian Approach during UNCLOS III

The desire for increased jurisdiction in fisheries and in other areas of the oceans was the motivation to participate in UNCLOS III proceedings for most coastal states, Canada included. The pursuit of such objective prescribed Canada's behavior which was "in line with the international movement of coastal states to secure expansion of national jurisdiction."<sup>111</sup>

In its position as a middle-power and interested participant, Canada pursued its objectives through the diplomatic channels; this Canadian approach was summarized very candidly by a member of the Canadian delegation:

We are not naive idealists, but we believe in international law and recognize that we cannot pick and choose the laws that suit us...neither are we among the superpowers. We cannot impose our will on others by force, even if we believe it was proper to do so. Nor are we among the countries of the world that can pretend to play David against Goliath, hoping that sympathy for the little guy can win our battles for us. So we proceeded to negotiate.<sup>112</sup>

The avenue of compromise and diplomacy did in fact bring positive results with respect to Canada's fisheries interests. But the protection and management of the fisheries in an exclusive jurisdictional zone was not Canada's only preoccupation.

Canada shared the difficulties and concerns of some developing states in coping during the sixties, with the pollution problems of developed flag states.

Pollution from vessels issue was discussed in UNCLOS III, and preventive and remedial measures to prevent any pollution from this source were proposed. Although the traditional enforcement role of the flag states<sup>113</sup> is confirmed in the 1982 Convention, there is also recognition and clarification of the state's enforcement role.<sup>114</sup>

Of equal importance for Canada, was the acceptance of the coastal state's legislative authority, in special circumstances, to take mandatory measures preventing pollution from vessels, within the limits of its jurisdiction and in accordance with the international rules and standards of the competent international organization.<sup>115</sup>

But of greater significance was the inclusion in the 1982 Convention of the provision for a coastal state to secure special environmental authority in "ice-covered areas"; this provision has been dubbed the Canadian clause:

Coastal states have the right to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the exclusive economic zone, where particularly severe climatic conditions and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance. Such laws and regulations shall have due regard to navigation and the protection and preservation of the marine environment based on the best scientific evidence.<sup>116</sup>



The inclusion of this provision also supported by the USSR in the new law of the sea secured Canada's special environmental authority in "ice covered areas" and in essence gave international validation to its 1970 AWPP legislation which had received much criticism from the US.<sup>117</sup> Other Canadian interests were met and will be discussed in the next section.

Having established that, for both Canada and the Soviet Union, their approach during UNCLOS III consisted of seeking international support for the inclusion of conventional legal provisions that would meet their interests and concerns, it is important to consider both Canadian and Soviet claims in light of the 1982 Convention.

#### Comparative Analysis of the Canadian and Soviet Claims, and the 1982 Convention

In assessing similarities and differences between the international legal basis of their claims of internal waters status for their respective northern sea routes, it is enlightening to examine concomitantly what can be of avail within the provisions of the 1982 Convention to sustain the position of both states, as well as in customary international law.

#### Arctic Sector Theory

The Soviet Union is said by Soviet experts to have committed itself to the sector theory with the enactment of the 1926 Decree. However,

the Soviet Government has never expressly declared its espousal of this theory; rather, it is adopting a silent rule of conduct on the matter. This has been interpreted as a willingness to maintain the theory alive and to keep its options open. The issuance of an official disclaimer of the theory by Soviet authorities would hinder their resorting to it should need be. One of the reasons could well be that the USSR is relying on the 1926 Decree, which established the sector lines, to support its position in discussions with Norway to settle their shelf delimitation in the Barents Sea.

Canadians have been attributed with the development of the sector theory insofar as the Arctic is concerned. No recent government officials nor politicians have alluded to it as a basis for sustaining Canada's claims with respect to the NWP. Since 1904, the sector line appears on official Canadian maps. There has been no formal denial to the effect that the Government of Canada considers the sector principle as a valid basis for its claims. Insofar as Canada is concerned, it would appear that the theory has been put on the back burner, or that it is dormant, to say the least. It could well be that the reasoning for Canada's silence is somewhat akin to what has been suggested for the Soviet Union: the sector theory will not necessarily be advocated, but would be, should it become necessary.

The sector theory as incorporated in the 1926 Soviet Decree and as alluded to by Soviet experts and Canadian officials has never received international recognition. "The general opinion of publicists and commentators is that the sector theory has no legal validity as a source of title in international law, and cannot serve as a legal basis for the



acquisition of sovereignty over land, and a fortiori, over sea areas".<sup>118</sup> Canada has never mentioned it during the UNCLOS III discussions, and furthermore the 1982 Convention does not make any mention of it, so that it does not appear to have been either retained or internationally recognized as a valid basis for claims.

#### Historical Basis

In studying the development of Soviet international legal thinking in matters of maritime jurisdiction, the reliance on historicity gains prominence over either the sector theory or the closed sea doctrine. The combination of historical discovery, economic development, and strategic concerns along with physical considerations of the bodies of water in question constitute the foundation of Soviet Arctic claims on historical basis. In response to the US protest related to the Soviet's claim of internal water for Peter the Great Bay, the USSR Government explained that those waters are "historically waters of the Soviet Union by force of geographic conditions of that bay and its special economic and defense significance."<sup>119</sup>

The very notion of history implies a chronology of events in an evolutionary process over time; such a sequence of events could well include discovery, occupation, economic activity and others relevant to the essence of statehood. Soviet international experts have molded the historical basis notion from the wording of domestic legislation, so that claims can be sustained on the basis of history together with other

considerations of vital interests. And the National Northern Sea Route is of that historical category.

In the Canadian perspective, historical basis can be invoked to sustain the internal waters status of the NWP. Both government officials and politicians have claimed exclusive jurisdiction over the NWP on historical grounds and as recently as 1985. Although the government has not specified exactly what the implications are, experts are of the opinion that to substantiate such a claim, Canada would need to prove "exclusive control over those waters for a long period of time", to show that "this control has been acquiesced in by foreign states, particularly those affected by the claim."<sup>120</sup>

Succinctly, both Canada and the USSR are claiming exclusive jurisdiction over the Northwest and Northeast Passages on the basis of history.

The international legal regime does provide two avenues for historical claims: customary law allows for the argumentation of claim founded on historical basis as in the case of historical bays, and conventional law provides for the drawing of straight baselines which has the effect of making internal all the waters enclosed within the perimeter, thus created by such baselines. This begs a first question: Can Canada and the Soviet Union claim the waters of their northern sea routes as internal on the basis of history?

In considering the Arctic region, the only clear historic claim made has been that of the Peter the Great Bay<sup>121</sup> by the Soviet Union. Also, the 1951 Fisheries case, between Norway and the United Kingdom, dealt with historical arguments to claim the Indrelia sea route as



internal waters;<sup>122</sup> but history was secondary to geology in the argumentation put forth. To claim its skjaergaard, Norway invoked history but stressed its straight baseline application to support its case that the fjords along its coastline were within Norwegian internal waters. As a result of the 1951 Anglo-Norwegian Case, the straight baseline system was incorporated in the 1958 Convention on Territorial Sea and the Contiguous Zone<sup>123</sup> and reconfirmed in the new Law of the Sea Convention.<sup>124</sup>

Further, both the 1958 Convention and the 1982 Convention, adopted the 24 mile<sup>125</sup> closing line for bays claimed as internal waters. Although the possibility of having historic waters has been referred to in the 1982 Convention, the question has not been clarified<sup>126</sup> and only customary law offers any guidance. For example, the requirements to claim a historic bay are quite strict and straight-forward. By extrapolation, in claiming the historic waters status for these waterways, Canada and the Soviet Union would need to demonstrate their effective control over those waters for a long period of time, and most importantly, the acquiescence by other states of such a historic title to those Arctic waters. Even if the exercise by Canada of jurisdiction and control could be convincingly presented,<sup>127</sup> and that of the USSR is established, the US objection or protest to these waters having internal waters status would prevent compliance with the exigency of acquiescence by other interested states. Hence, in establishing historic title, so that the waters of the NWP and NEP are deemed to be internal, the customary law avenue relating to the "extension" of the historic bay requirements would appear to be of no avail.

It is undoubtedly due to the difficulty of arriving at a definition of terms, probably more importantly at reaching consensus, that the new law of the sea is silent on the historical basis for establishing title to waters, other than those of bays.

But if the NEP and NWP were considered 'international' waters, the implications would be enormously different. At this time, it is important to address whether or not the NWP and NEP can be deemed 'international' waterways in light of the international legal framework.

#### The International Waters Status

The mere discussion of international straits at the UNCLOS III preparatory sessions produced some of the most animated debates: the maritime powers were insisting on maximum unrestricted freedom of navigation for understandable commercial and strategic imperatives, while the coastal states were preoccupied with increased restrictions for marine environmental protection and national security purposes.<sup>128</sup>

The various and often conflicting positions of states crippled the 1982 Convention in any effort to define or in any attempt to clarify the international navigable strait:

UNCLOS (III) has not altered or clarified the existing uncertainty in customary law over the definition of 'straits used for international navigation'.<sup>129</sup>

Since there is evidently a lack of consensus as to the exact definition of an international strait, it is nonetheless important to highlight the basic characteristics of such international waterways,



namely the geographic and functional elements of international straits, and more precisely, to investigate how these elements apply to the NWP.

Two general observations are first required: the straits having within their borders a strip of high seas or EEZ present no problem since the traditional freedom of the high seas governs; however, problems do arise when the territorial seas of one or more bordering states overlap and eliminate the traditional high seas passage.<sup>130</sup>

Insofar as the geographic elements are concerned, it is generally conceded that "any narrow and natural passage between adjacent land masses, joining two parts of the high seas or two bodies of water,"<sup>131</sup> comes within the definition of a strait. The 1982 Convention refers to "straits used for international navigation between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone."<sup>132</sup>

In light of the above, it would therefore be essential, insofar as the NWP is involved, to establish whether or not it joins two parts of the high seas and whether or not Canada's territorial sea overlaps.

As mentioned earlier, the NWP has several routes, the most important ones being Route 1 and 2, which are the most suitable for deep-draft navigation. And if the test were applied, it could be argued that the NWP is an international legal strait since existing technological engineering has produced icebreakers that can easily travel through its frozen waters and ice terrain, from the Atlantic (via Labrador Sea, Davis Strait and Baffin Bay) to the Pacific Ocean (via Beaufort Sea, Chuckchi Sea and the Bering Strait);<sup>133</sup> in other words, from a high seas or EEZ area to another.

The extension of Canada's territorial sea from three nautical miles to twelve nautical miles in 1970, had the effect of overlapping the State's territorial sea and bringing under Canada's total control the major gateways into and out of the NWP.<sup>134</sup> The ultimate result was to include the waters of the NWP under the exclusive jurisdiction of Canada. It is how it was perceived, and intended.

Thus, from the geographic perspective, the NWP can be said to be an international legal strait,<sup>135</sup> although all legal experts may not share the similar conclusion.<sup>136</sup> There is however, less certainty in relation to the functional element or characteristic pertaining to international straits.

In examining the functional aspect of a sea route to determine international strait status, the principle emulating from the Corfu Channel Case is applied: the international strait must have had an appreciable history as a "useful route for international maritime traffic."<sup>137</sup> The facts upon which that principle was formulated are supportive: 2884 crossings by ships of seven states over a period of 21 months.<sup>138</sup>

In contrast, the NWP has had up to 1984 and over the last eighty years, forty crossings of which twenty seven (or near 70%) were by Canadian vessels while ten (or 25%) of those were by American ships with Canadian officials aboard.<sup>139</sup> In light of those statistics, the most that can be said is that any attempt to classify the NWP as an international strait on the basis of its functional aspects could not be sustained.<sup>140</sup>



If the actual use of the NWP is not conclusive, what about the potential use in the years to come?

The American courts give weight to the potential usefulness of sea routes in assessing their navigability; it is the test of the "capacity for navigation which is the effective criterion."<sup>141</sup> However, in international law, as in the Corfu Channel Case, it is the test of actual use.

To this date, there has not been, any voyages through the NWP, which can be termed as of a "commercial" navigation nature. The SS Manhattan was a commercial vessel of an oil company, but it was carrying water on its trial run through the Passage. On the basis of having a good record as an advantageous international maritime trade route, it would be difficult to maintain that the NWP is an international legal strait, notwithstanding the fact that international shipping is foreseen to augment in the NWP as the hydrocarbon developments occur and progress on both the American and the Canadian areas of the Beaufort Sea.<sup>142</sup>

Then, the NWP could be termed as a frequently used international maritime waterway, conferring upon it the international strait status: "[if] industrial proposals to use the passage are sanctioned by the Canadian government, oil and gas traffic could become a reality by 1990."<sup>143</sup>

Insofar as the Northeast Passage is concerned, "all of the straits connecting two polar seas of the Northeast Passage or within a polar sea of the Northeast Passage could be characterized as 'used for international navigation'";<sup>144</sup> they join parts of high seas to another. But the Soviet Union through its 1960 Statute establishing a

twelve mile territorial sea has closed off the gateways to the Northeast Passage: the Vil'kitskii Strait and the Karskiye Vorota Strait which are essential waterways for any foreign ships attempting to traverse the NNSR.<sup>145</sup>

In terms of usage, the Northeast Passage is a very busy waterway. The Soviet Union exercises effective control over it since it has rendered compulsory icebreaker and pilotage services, in most straits of the Passage,<sup>146</sup> and in 1967, when the Soviet Union invited certain foreign shippers to use the Northeast Passage, it distributed a brochure setting out the rates."<sup>147</sup> The implication is that any foreign vessel is capable of using the passage as long as it pays user fees for services and abides to rules and regulations of the NEP Authority.

"Coastal trading and cabotage is a monopoly of the Soviet State along the Northern Sea Route, and it is unlikely that foreign shipping would be admitted to any sizeable extent in this trade. But the development of the Northern Sea Route has created the infrastructure, as measured by navigation facilities, ice-breaking and pilotage services, weather reconnaissance, basic knowledge of the region, ports, and a potential demand for expanded interchange with other areas of the world, for navigation on quite another scale."<sup>148</sup> In other words, the Northeast Passage could easily pass the functional test as to the number of ships including foreign flag vessels that are traveling through its waters, since it is open for business. The problem still remains that the NNSR is under the exclusive jurisdiction of the state, which considers its waters as internal.



Should the NWP and the NEP thus become international navigation routes, all ships and aircrafts would enjoy under the 1982 Convention the unimpeded right of transit passage<sup>149</sup> for the purpose of "expeditious and continuous transit."<sup>150</sup> Further, submarines could proceed in their normal mode of navigation, that is travelling submerged under the Passage. It is consequently to the advantage of maritime powers, for both commercial and strategic purposes to have as many straits as possible considered international waterways. It is for such reasons that the US maintains that the NWP and NEP waters are international.

In terms of both the NWP and the NEP, they could hardly be classified as international sea routes since they do not meet the functional criterion, but in different respects: the NWP could not be termed a waterway 'used for international navigation' for there is little movement; and the NEP Authority requires assistance for ice-breaker and pilotage services for vessels going through the Key straits. The various legislative measures of the USSR combined with Soviet legal doctrines and interpretations are invoked to maintain those NEP waters as internal.

### Legislative Measures

Through a series of enactments, the Soviet Union has asserted exclusive jurisdiction of the NNSR and maintained that its waters are internal. The intent of these measures was constant, and their effect was to counter any attempt to internationalize the passage: 1) the

espousal of the sector theory; 2) the establishment of a 12 n. mile territorial sea, closing off essential straits; 3) the implementation of a management framework requiring compulsory ice-breaker and pilotage services, and regulating movement of vessels; 4) the establishment of an EEZ; 5) the issuance of rules governing passage of warships; and, 6) finally, the drawing of straight baselines along its coastline.<sup>151</sup>

With these legislative measures in place, no foreign vessel could venture into the NEP waters without the concurrence of the Soviet Government.

For its part, the Canadian government proceeded somewhat similarly with respect to its attempt to consolidate the internal waters status of the NWP and to regulate any intrusion of foreign vessels in its waters: 1) pollution safety and construction and design standards were made mandatory for ships sailing through the NWP, and a 100 n. mile pollution protection zone was established; 2) the territorial sea was extended from 3 to 12 nautical mile to control the gateways to the Passage; 3) the 200 n. miles EFZ was established to assert greater jurisdiction over the fisheries resource; 4) the decision to adopt immediately measures to apply Canadian civil and criminal law in offshore areas including the Arctic; 5) the establishment of straight baselines around the Canadian Arctic Archipelago.<sup>152</sup>

The motivation of both states in introducing these legislative measures was to secure the exclusive sovereignty of the state over the water and ice of their waterways. In the Soviet perspective, strategic concerns may have been of primary interest; for Canada, a combination of national sovereignty preoccupations and environmental concerns for the



fragile ecosystems of the Arctic undoubtedly prompted the enactment of these legislative concerns.

It is interesting to note that the Northern Sea Route Authority was given increased powers pursuant to the US attempt to sail through the Northeast Passage. Similarly, the 1970 AWPP Act and the extension of Canada's territorial sea from 3 to 12 n. miles were directly related to the Manhattan challenge of 1969-70, and the establishment of straight baselines in 1985, to the Polar Sea traversing the Northwest Passage.

In light of the 1982 Convention, it should be pointed out that the ice-covered areas provision does recognize both Canada and USSR's "uniqueness" of their Arctic domain, and allows for the enactment of special legislation to protect the fragile environment of those Arctic areas that lie within their EEZ's. It represents, for Canada, international acknowledgment of the validity of its 1970 legislation, which, besides attracting US attention and protest, had created a 100 n. mile pollution prevention zone.

Further, both the USSR and Canada's twelve n. mile territorial sea become acceptable internationally under the new law of the sea.

#### Straight Baselines Regime

The 1982 Convention has restated the provisions of the 1958 Convention which had codified the judgment of the 1951 Fisheries Case elaborating the criteria for the establishment of straight baselines.

Canada has drawn straight baselines around its Arctic Archipelago as provided for in the 1982 Convention. A discussion of this issue was

presented at the end of Chapter 2. Canada can justify these baselines on the basis of the "very special geographic and physical characteristics of the archipelago", and on "the year-round and immemorial use of some of those waters to consolidate its title".<sup>153</sup> It would thus appear that a combination of the uniqueness of the Arctic area, with the historical fact proving occupation since time immemorial by the Inuit population could justify Canada's actions to draw straight baselines.

The Soviet Union has established straight baselines around its coast in the two decrees of February 1984 and January 1985.

A question that is raised relates to the 1982 provision which states that when waters enclosed by baselines were not previously considered internal waters, "a right of innocent passage shall exist."<sup>154</sup> Neither Canada nor the USSR however considered the waters landward of those baselines as international waters; therefore, no right of innocent passage would need to exist. However, the US would not agree, for Washington maintains that these enclosed waters of the passages are international.

### Conclusions

The Soviet Union and Canada are basically founding their respective claims to the NEP and NWP on the same principal basis: history and geography. They have implemented legislative measures to reinforce their positions and to ascertain to the international community that these northern passages are within their exclusive jurisdiction. Although the Arctic Sector theory is not internationally recognized to



sustain their claims, both states have not officially stated their rejection or abandonment; their reluctance to relinquish the sector theory may stem from the desire to avail themselves of that principle should the need be.

Canada drew its Arctic baselines six months after the Soviet Union took similar action the USSR action was unilateral, so was Canada's in spite of the fact that the Canadian measure was in reaction to the US insistence that the NWP waters are international.

CHAPTER FIVE  
THE US POSITION AND RAMIFICATIONS

Around the world there are numerous straits which, on the basis of their international status, are to the avail of all states for maritime navigation even though they may fall within the territorial waters of one or more states. Some of these include the Strait of Gibraltar from the Atlantic to the Mediterranean, the Strait of Malacca from the Bay of Bengal to the South China Sea between Malaysia and Indonesia, and the Strait of Hormuz between the Persian Gulf and the Gulf of Oman. Such waterways do meet the two essential characteristics of an international strait: they link areas of the high seas or exclusive economic zones and have traditionally been regular and valuable commercial routes.

As underlined above, the NWP lacks the attribute of being a traditional commercial waterway. But also in the Arctic region, as it has been discussed, there exists another northern waterway, notably the Northeast Passage (NEP) or the Northern Sea Route. It is in dealing with these "international" waters that the US Arctic policy and practice shows signs of inconsistency.

The US Policy

The most recent and clearest statement of the American position towards either Soviet or Canadian claims in the Arctic is to be found in the March 10, 1983 Presidential Proclamation,<sup>155</sup> where it is clearly



expressed that the US will respect the rights of other states as embodied in the 1982 Convention of the Law of the Sea, provided that the traditional rights and freedoms of navigation and overflight of the US are also respected.

Insofar as the Canadian and Soviet claims are concerned, the United States,

- o on historical claims,  
"objects to any implication that Arctic waters have a degree of historicity that might make them the subject of an internal water regime."<sup>156</sup>
- o on territorial sea,  
"will recognize [a 12 n. mile territorial sea] so long as [such claims] take account of the international rights of other States, notably the right of innocent passage."<sup>157</sup>
- o on environmental protection and security measures,  
believes that "the navigational rights and freedoms traditionally enjoyed by all states in and over the oceans are applicable in the Arctic waters as they are elsewhere around the globe. Arbitrary interference with those rights and freedoms, whether in the name of security or in that of environmental protection, cannot be accepted."<sup>158</sup>
- o on transit passage,  
takes "the view that the transit passage regime applies to all straits used for international navigation in the Arctic."<sup>159</sup>
- o on the sector theory  
does not agree with claims put forth on the basis of the sector theory.<sup>160</sup>
- o on the ice-covered theory  
"takes the article [234, on ice-covered areas] as little more than a recognition that some special pollution rules may be called for in the Arctic, consistent with general navigational rights and freedoms."<sup>161</sup>
- o on straight baselines,  
believes in the strict or literal application of Article 7 of the 1982 Convention on straight baselines,

which can be drawn when there is a "fringe" of islands aligned in the general direction of the coast; this "precludes straight baselines from being drawn, for instance, from one side of the Canadian mainland, up and around the Canadian islands to the other side of the Canadian mainland, having the effect of making all the water inside such lines internal waters."<sup>162</sup>

The major concern of the US is to avoid acquiescing in the internal waters status of states' waters that have been, or could with time become, international waterways for either commercial or military reasons. The recognition of the Arctic Passages as internal waters would create precedents, in the US opinion, which could be followed by other coastal states elsewhere in the world. That being said, it is important to emphasize the fact that the "uniqueness" of the Arctic Ocean has been formally and internationally recognized in the 1982 Convention. It is also difficult to imagine any other area of the globe where the very nature and the particularities of the Arctic Basin could be considered as identical.

Furthermore, it is apparent that by maintaining the traditional ocean law regime as operative and by asserting at the same time that Washington recognizes the general thrusts of the 1982 Convention to which the US is not a signatory party, the United States is adopting a "keep-the-options-open" approach. This attitude enables the US to somehow pick and choose as to which claim Washington may want to challenge the validity.



### The U.S. Practice

As mentioned beforehand, the American position is in simple terms, that the Arctic passages are international waterways over which the traditional freedoms of navigation and innocent passage apply. While official Washington insists that the US is not challenging any Soviet or Canadian claims, it does, however, assert that the US considers the NWP and the NEP international sea routes.

In dealing with the functional aspect of a sea route to determine its international strait status, it has been noted earlier that the ruling of the Corfu Channel Case is of essence: the international strait must have had considerable historical usage.<sup>163</sup> In the case of Soviet Arctic waterways, ice conditions are such that to undertake the NEP, a navigator will need to enter straits that are basically choke-points between the Siberian seas.<sup>164</sup>

There have been two attempts by the United States to pass through the Vilkitskii Straits. A first one was "secretly" planned in the summer of 1965; the Northwind icebreaker at that time was under constant Soviet surveillance and when it came within 30 miles of the mouth of Vilkitskii Strait, US authorities ordered the icebreaker to abandon the attempt so as to avoid a showdown with the Soviet Union over the Northeast Arctic passage.<sup>165</sup>

Two summers later, the US sent two powerful Coast Guard icebreakers, the 269 foot Edisto and Eastwind, on an 8,000 mile circumnavigation of the Arctic.<sup>166</sup> Again, rather than challenging a Soviet warning, the US government ordered the vessels to abandon their

mission.<sup>167</sup> This time, however, the US State Department issued a statement and an official protest was sent to Moscow. The United States maintained that:

the Soviet law cannot have the effect of changing the status of international waters and the rights of foreign ships with respect to them. These rights are set forth clearly in the Convention on the Territorial Sea and the Contiguous Zone of April 29, 1958, to which the Soviet Union is a party. There is a right of innocent passage for all ships through straits used for international navigation between two parts of the high seas, whether or not, as in the case of the Vilkitsky Straits, they are described by the Soviet Union as being overlapped by territorial waters, and there is an unlimited right of navigation on the high seas of straits comprising both high seas and territorial waters.<sup>168</sup>

In other words, the position of the United States is that the Northern Sea Route is an international waterway over which the traditional freedom of navigation and the right innocent passage apply.

In the Canadian Arctic, the US has challenged the internal waters status of the NWP as claimed by Canada on two separate occasions: the Manhattan Incident<sup>169</sup> of 1969 and the Polar Sea Intrusion of 1985.<sup>170</sup> Both ventures into the ice-clogged route of the NWP were nothing more, in Washington's view, than the innocent passage of a foreign vessel in an international waterway.<sup>171</sup> Canada expressed "deep regrets" over the US most recent challenge,<sup>172</sup> and both Canada and the US agreed to disagree, and mutually consented to the crossing without prejudicing either states' position.<sup>173</sup>

These agreeable arrangements resulted from intense diplomatic maneuvering between officials of both governments. For the Canadian Government, the whole episode was to say the least embarrassing,



especially in light of the present Government's major thrusts in terms of its foreign policy, which are aimed at establishing closer cooperation and intensifying commercial and trade relations with the United States.<sup>174</sup>

Face-saving gestures had to be devised: an Order-in-Council granted permission to the US to traverse the passage, and two Canadians would be on board the Polar Sea ice-breaker as it will cross the NWP.<sup>174</sup> The conflicting statements from Canadian and American officials as to the role of the Canadians on board the Polar Sea could be interpreted as adding "insult to injury."<sup>176</sup>

During those weeks of the evolving Polar Sea saga, it is suspected - and could well be understandable - that many Canadians, equally those in Government, would have wholeheartedly assented to the comments by the Indonesian Ambassador, Mr. Djalal, on American relations with friendly countries:

...the United States seems to have the knack of pressuring its friends. It seems to have the habit of putting its friends into difficulties...In my mind the United States is really trying to test our friendship without offering a corresponding degree of friendship and understanding of our problems. I think this posture will raise difficulties in the long run politically. Legally, we have our own opinion...maybe the International Court of Justice will decide one day. But politically, we will be placed in a difficult position where our friendship is being tested. We do not really mind as long as we also know that the United States is showing some understanding of our difficulties and our problems. But, that, we do not see.<sup>177</sup>

Interestingly enough, among the measures taken to reassert its claims to the NWP, the Government of Canada immediately withdrew its "1970 reservation to Canada's acceptance of the compulsory jurisdiction of the

International Court of Justice,"<sup>178</sup> demonstrating to the international community of nations its confidence in the validity of the Canadian claims to the NWP. Further, Canada established straight baselines around the Canadian Arctic Archipelago.<sup>179</sup>

### Conclusions

In terms of the US position on what Washington considers international waterways worthy of challenge, the lack of consistency in practice is rather striking. When it comes to challenging Canada's claims to the Northwest Passage, the US government does not order its icebreakers to abort their missions.

Clearly, the US does not seem to react as much to the outcry per se, but to whomever has the power, and the political and military capabilities to support its protest.<sup>180</sup> Indeed, Washington retracted in face of the USSR protest. Obviously the sounds of Moscow did not fall on deaf ears, and the USSR was listened to by the US. Moscow had definitely more clout than Ottawa; and, in the world of international politics, military strength does talk.

From the Canadian perspective, it could be argued that such US behavior in accepting the Soviet exclusivity over its heavily travelled NEP, has in fact undermined the US position on the international status for the NWP.

What effect has the US action had on Canada-US relations? It is difficult to establish a cause and effect relationship, but, in November 1985, Canada rejected the US invitation to participate directly in the



American Strategic Defense Initiative, and allowed Canadian companies to bid on the so-called "Star Wars" contracts. However, on March 19, 1986, Canada and the US signed a five year extension to the NORAD agreement, and Canada accepted the US invitation to participate in the development of a manned space station at a cost to Canada of \$570 million over the next decade and a half. On the same occasion, progress was made on a longstanding irritant to Canada-US relations, the acid rain issue.<sup>181</sup> Further, the thin icy layer covering the initial steps for free-trade negotiations between both countries has been broken.

If neighborly and friendly relations between Canadians and the US were damaged, or at least strained, it does appear that differences have been mended through diplomatic channels by agreeing to disagree and by the inclusion of a no-prejudice clause in an understanding reached between both parties prior to the Polar Sea voyage.

Further, other relevant results of claiming the international waters status for the NWP are that the US is, on the one hand, opening the waters of the passage to navigation by its most feared neighbors in the Arctic region, the Soviet Union, and on the other, Washington reinforces its muscle-wielding big-bad-guy image that some Canadians may have not only perceived over the years, but accepted:

Apart from legalizing Soviet intrusions, they (Americans) can only give a new lease on life to those essentially anti-American forces of extreme Canadian nationalism whose influence has much diminished in the past few years.<sup>182</sup>

If the ultimate goal was to secure passage for US vessels and submarines in the NWP, the "macho" approach does not appear to have been well

received by Canadians. And the newly appointed US Ambassador to Ottawa has acknowledged that

most certainly, it [Polar Sea trip] was not designed to generate animosity towards the United States among the Canadian body politic and Canadian citizens. It certainly was not designed to create an issue between both governments. Now, experience suggests we didn't handle this as well as we might have.<sup>183</sup>

Insofar as the US position on the status of the waters of the NEP and NWP, although Washington has always maintained that these are international waters, one could argue that Canada's action of drawing straight baselines was exactly what the recent US challenge of the NWP was intended to bring about. The USSR had already blocked off its northern sea route with straight baselines in January 1985. Cognizant of Canada's traditional claims over the NWP waters, Washington must have assumed that Canada would react to any challenge. If Canada did or said nothing, the implications would be clear: the NWP waters would be deemed international and accessible to Soviet vessels, and this, Washington obviously would not welcome. By drawing straight baselines, Canada thus needs to ensure the security of its Arctic region. To do so effectively, Canada must rely upon its longstanding powerful ally,<sup>184</sup> the United States, with whom defense arrangements already exist through the framework of NATO and NORAD.

Further, in consolidating its claims on the Canadian Arctic, Canada would need also to put forth the funds required to assert in fact its sovereignty over those waters and to insure its national security, thus lightly alleviating the US financial commitments for ensuring Arctic strategic defense. In other words, the US had nothing to lose, and



everything to gain by challenging Canada's claims. And to top it all, the US official position on freedom of navigation needed not be relinquished.

Indeed, the inconsistencies in the practice of US policy on the freedom of navigation into international waters are to say the least markedly noticeable, and can be aggravating for friendly states.

## CHAPTER SIX

### SUMMARY

The examination of the Soviet and Canadian positions concerning their respective approaches to claiming exclusive jurisdiction over their northern sea routes has revealed extraordinary commonalities. Insistence on historicity as a legal basis for these claims combined with the recent measures of drawing straight baselines constitute the most astonishing similarities. The USSR has adopted legislative enactments ever since the 1920's to consolidate its complete control over the NNSR. But it is only since the early seventies that Canada has increasingly been resorting to legislative measures in protecting the internal waters status of its NWP.

The US position toward the international legal status of the waters of both the NEP and NWP is identical: these are international waters and the traditional freedom of navigation and the right of innocent passage apply. The inconsistency of US state practice in relation to Soviet and Canadian claims is striking.

The Soviet and Canadian Governments have not officially relinquished the Arctic sector theory as a basis for their claims. International legal experts in both countries have expressed interpretative opinions in support of the internal waters status of the Arctic waterways; they have advocated, especially in Canada, stronger



action on the part of governments to strengthen Canada's international legal position concerning its claims to the NWP.

The major difference between both cases lies less in the legal argumentation in support of the claims, than in Canada's and the Soviet Union's enforcement capabilities. The Soviet Union as a major maritime power and a superpower has forced, by its sheer military strength, the US to renege on its challenging ventures into the NEP. As a middle power, Canada has relied on the avenue of diplomacy to bring about international recognition of the uniqueness of its Arctic region and the need to protect its fragile environment. It is unthinkable that Canada would consider any military action against its friend and ally, the US, to enforce its claims.

The Soviet Union has established effective control of its passage, and reserves all rights to grant traversing privileges to foreign navigation. In 1967, the USSR invited foreign vessels to use its waterways. Canada is pursuing identical objectives, and has officially and repeatedly confirmed its intention to render the NWP route operative for international navigation. Both countries have extended to twelve nautical miles their territorial seas so as to include essential gateways to their northern sea routes.

Another significant contrast lies in the fact that the Government of Canada has repeatedly stressed, quite openly and candidly, its official position on the internal waters status of the NWP. Silence has been the golden rule of the Soviet Government with respect to the waters of the NNSR. Legislative enactments aside, the Government of the USSR

seems to have relied more heavily on its military capabilities than on words and statements to assert its sovereignty.

The Soviet claims over the years have been more expansive with the combination of doctrinal theories and principles. Soviet experts and authorities have developed the closed-sea principle by virtue of which several northern seas are claimed as internal waters on basis of history and "vital interests"; economic and strategic considerations are essential components of their global argumentation.

Canada's claims are essentially based on historical habitation and continuing use of Arctic ice by the Inuit people since time immemorial, together with the uniqueness of the Arctic environment and the establishment of straight baselines. The combination of these elements would not be prejudicial to U.S. interests, and no such basis would create a precedent allowing for other states to close other international waterways around the world.<sup>185</sup> Any resemblance to the Canadian situation is limited to the NNSR, which is in fact already a national sea route.

Bilateral negotiations with the United States could ensure future access to the NWP waters. It is unlikely that Canada would relinquish any exclusive jurisdiction over these waters in the NWP; however, Canada-US agreement could well provide for US input into the elaboration of future rules and regulations governing transit of foreign vessels in Canada's NWP.

Canada's commitment to increased Arctic surveillance and to develop the technical machinery to manage effectively its northern waterway augurs well for future usage of the NWP. A Northwest Passage Authority



## NOTES TO CHAPTER 2

<sup>11</sup>Government of Canada, Department of Fisheries and Ocean; Sailing Directions-Arctic Canada, Volume 1, Third Edition (1982); at p. 1.

<sup>12</sup>For detailed information concerning explorers of the NWP and their expeditions see Pharand, Donat in collaboration with L.H. Legault: Ibid.; p. 22-58.

<sup>13</sup>Government of Canada, Ibid.; p. 1.

<sup>14</sup>At that time, Britain had very little interest in the barren and frozen lands of the Arctic. A colonial official of that era dryly summarized Britain's action in a memorandum: "The object of annexing these unexplored territories to Canada is to prevent the United States from claiming them, and not from the likelihood of their being any value to Canada." Quoted by Michael Rose and David North: "A Questionable Claim", in MacLean's, August 19, 1985, p. 21. See also Smith, Dr. Gordon W.: Canada's Arctic Archipelago: 100 Years of Canadian Jurisdiction; Government of Canada Publication, Department of Indian and Northern Affairs; Supply and Services Canada (Ottawa); no. QS-8276-000-BB-A1; 19 pages.

<sup>15</sup>Pharand, D.: Ibid.; p. 38.

<sup>16</sup>Reid, "The Canadian Claim to Sovereignty Over the Waters of the Arctic," 12 Canada Yearbook of International Law (1974); p. 111-115. The Sector principle will be discussed later in this chapter.

<sup>17</sup>Quoted in Legault, L.H., "Canadian Practice in International Law During 1980 as Reflected Mainly in Public Correspondence and Statements of the Department of External Affairs," Canadian Yearbook of International Law (1981), at p. 320.

<sup>18</sup>The discovery of huge oil deposits in Prudhoe Bay Alaska prompted a Humble Oil vessel, the SS Manhattan to go on a test voyage through the NWP in September 1969. Disregarding Canada's offer of assistance, Washington announced that a US Coast Guard icebreaker would escort the Manhattan. This unwarranted US intrusion offended Canadians, who were delighted when the US icebreaker ran into difficulties and had to head home. The Manhattan got stuck twice and had to be rescued by the Canadian icebreaker John A. MacDonald. Canada's assertions of sovereignty over the Arctic Archipelago and internal waters of the NWP were followed by the Arctic Waters Pollution Prevention Act (1970), the enactment of which incited an official US protest. The Act imposed penalties for and prohibited discharge of waste for 100 nautical miles off the Canadian mainland; the legislation also required strict specifications relating to vessel design, manning of ships and other navigation requirements for vessels using the NWP. See Appendix A "July



31, 1985 New Release: 'Voyage of the Polar Sea' and Fact Sheet," for relevant provisions of the AWPP Act; at p. 2 of Fact Sheet. Accounts of the Manhattan incident can be found in: Brian Smith: "Notes-Canadian and Soviet Arctic: An Icy Reception for the Law of the Sea," Virginia Journal of International Law (1976) 16:3; p. 609-634; at page 611-614; L.P. Bloomfield, Ibid.; p. 97-99; and Dosman, E.J. (ed): The Arctic in Question, (1976), Oxford University Press, (Canada), 206 p.; at p. 34-58.

<sup>19</sup>Quoted in Pharand & Legault: Ibid., p. 88.

<sup>20</sup>In May 1985, Washington gave notice to Ottawa that the US Coast Guard icebreaker Polar Sea would be crossing the NWP en route from Thule Greenland to Alaska. Washington did not seek permission from Ottawa, but rather informed Canada of US intentions -- the American position being that the NWP is international waters. [The Canadian government did not announce the advent of the Polar Sea voyage to the public of Canada. A June 13, 1985 article, entitled "Arctic Authority at Stake" (in the Toronto Globe and Mail) by Franklyn Griffiths prompted the matter to be raised in the House of Commons (June 20, 1985).] Public outcry in Canada led the Government of Canada to issue a News Release (85/114), dated July 31, 1985 announcing that Canada had "authorized" the Polar Sea Voyage, in spite of the fact that the US never asked permission. (See Appendix A for News Release) Further, in an exchange of diplomatic notes, on June 24, 1985, both states agreed that the Polar Sea voyage would not be prejudicial to either countries' legal position (Len H. Legault, quoted in The Globe and Mail (Toronto), August 1, 1985, p. 2.

<sup>21</sup>The Globe and Mail (Toronto), August 23, 1985 at p. 3; also in The Gazette (Montreal), August 23, 1985 at p. B1. It is interesting to note, in contrast to the Mulroney comments, that, in 1970, while defending the AWPP Act, government officials and ministers were careful not to imply that the Act constituted an assertion of Canadian sovereignty, but they were restating that "Canada has always regarded the waters of the Arctic Archipelago as Canadian waters," as explained by L.H. Legault, "Canadian Arctic Waters Pollution Legislation" in Alexander, L. (ed.) The Law of the Sea - The United Nations and Ocean Management - Proceedings of the Fifth Annual Conference of the Law of the Sea Institute (1970). University of Rhode Island (Kingston, R.I.) p. 294-332.

<sup>22</sup>The July 31, 1985, News Release states: "The Government of Canada has made clear that the waters of the Arctic Archipelago, including the NWP, are internal waters of Canada and fall within Canadian sovereignty."

<sup>23</sup>See Appendix B "Statement Concerning Arctic Sovereignty" for the various measures taken to reaffirm Canada's position.



<sup>24</sup>The AWPP Act provided also for a 100 n. miles Pollution Prevention zone around the Canadian Arctic Archipelago, and Washington challenged the legitimacy of the Act under customary law: it was an "improper assertion of national sovereignty over areas of high seas" and created a "dangerous precedent," as explained in the State Department's Press Release. Ottawa requested that the official US protest be made public, but Washington declined. Further, to avoid the issue going on the international scene, Canada put forth a reservation limiting the I.C.J. jurisdiction concerning all "disputes arising out of or concerning jurisdiction of rights claimed or exercised by Canada to marine environmental control." See Brian Smith, "Notes - Canadian and soviet Arctic: An Icy Reception for the Law of the Sea," Virginia Journal of International Law (1976)16:3; p. 609-634. Also at that time, legislation was enacted to extend Canada's territorial sea to twelve nautical miles, hence giving Canada effective control of the eastern Barrow Strait and the western Prince of Wales Strait or total control "over the two gateways to the Northwest passage." Quoted in Pharand, D.: Northwest Passage: Arctic Straits; at p. 100-101. It should be noted as well that Canada transmitted a letter to the UN Secretary General modifying Canada's acceptance of the International Court's jurisdiction "by excepting from it disputes arising out of concerning jurisdiction or rights claimed or exercised by Canada with respect of the prevention or control of pollution or contamination of the marine environment in marine areas adjacent to the coast of Canada" in Pharand D., "The Legal Regime of the Arctic's, Some Outstanding Issues", International Journal, vol. xxxix, no. 4, autumn 1984; Canadian Institute of International Affairs, p. 742-799; at p. 768.

<sup>25</sup>See Johnson, Barbara "Canadian Foreign Policy and Fisheries" p. 52-99; at note 66 on p. 99; in Johnson, Barbara and Zacker, Mark W. (ed's): Canadian Foreign Policy and the Law of the Sea, (1977); University of British Columbia Press (Vancouver); 387 pages.

<sup>26</sup>Herman, Lawrence L. "Proof of Offshore Territorial Claims in Canada," Dalhousie Law Journal, vol. 7, number 1, March 1982; p. 3-38; at p. 9.

<sup>27</sup>Ibid.; p. 9.

<sup>28</sup>Ibid.; p. 10.

<sup>29</sup>Ibid.; p. 10.

<sup>30</sup>See Appendix B "Statement Concerning Arctic Sovereignty".

<sup>31</sup>Op. cit.

<sup>32</sup>Quoted in Head, Ivan L: "Canadian Claims to Territorial Sovereignty in the Arctic Regions," McGill Law Journal vol. 9, no. 3, 1963; p.



200-226; at page 203 and 204. Also partially quoted in Butler, William E.: International Straits of the World - North East Passage, (1978). Sijthoff Noordhoff, Alphen aanden Rijn (The Netherlands); 199 pages, at p. 71. As a note of interest, Senator Pascal Poirier was the first Acadian to be appointed to the Senate of Canada; the appointment was made by Canada's first Prime Minister, Sir John A. MacDonald, in 1885.

<sup>33</sup>Head, I.L.: Ibid.; at p. 209. Also earlier in 1938, the Hon. T.C. Crerar, Minister of Mines and Resources had stated: "What is known as the sector principle, in the determination of these areas is now very generally recognized, and on the basis of that principle as well our sovereignty extends right to the pole within the limits of the sector." Quoted in Head, I.L.: Ibid.; at p. 208. Also referred to in Smith, Brian F: "Notes - Canadian and Soviet Arctic: An Icy Reception for the Law of the Sea," Virginia Journal of International Law (1976) 16:3, p. 609-634; at p. 611.

<sup>34</sup>Shusterich, Kurt M. "International Jurisdictional Issues in the Arctic Ocean," Ocean Development and International Law, vol. 14, no. 3, 1984, p. 235-267; at page 253.

<sup>35</sup>From the Revue generale de droit international public, 1970, No. 1, at p. 126. Quoted in Dupuy, Rene Jean: The Law of the Sea (1974); Oceana Publications Inc. (Dobbs Ferry N.Y.); A.W. Sijthoff-Leiden; 210 pages; at p. 60.

<sup>36</sup>Ibid.; see note 48 at p. 60; Cited by Jacque Yvan Morin, Canadian Yearbook of International Law, 1970, at p. 234. As a note of interest, it should be mentioned that "Canada claimed jurisdiction over all matters" in relation to a crime committed on an ice-island off the coast of Ellesmere Island which is part of the Canadian Arctic Archipelago.

<sup>37</sup>Colson, David A. "Political and Boundary Issues Affecting Arctic Energy Resources". Comments of David A. Colson before the 18th Annual Law of the Sea Institute, September 16, 1984. Mimeograph copy. Office of the Legal Advisor Department of State (Washington, D.C.) 25 pages; at p. 20. See also Shusterich, Kurt M. "Jurisdictional Issues in the Arctic", Ocean Development and International Law, Volume 14, no. 3, 1984, p. 235-272; at p. 250.

<sup>38</sup>Smith, Gordon: Canada's Arctic Archipelago: 100 Years of Canadian Jurisdiction, (1980) Department of Indian and Northern Affairs (Supply and Services Canada); Ottawa, 19 pages; at p. 10. Emphasis added.

<sup>39</sup>Pharand, Donat: "Canada's Jurisdiction in the Arctic," Dalhousie Law Journal, volume 7, no. 3, October 1983; p. 315-342; at page 324. Further, Pharand expresses the opinion to the effect that Canada would be ill-advised to think that the sector theory could be useful in sustaining Canada's Arctic claims.



<sup>40</sup>Green, L.C. "Canada and Arctic Sovereignty", Canadian Bar Review; 48, December 1970; at page 760. Also quoted in Dosman, E.J. (ed.): Ibid.; at page 193.

<sup>41</sup>Pharand, Donat: "Sovereignty and the Canadian North," p. 141-164, in Whittington, Michael S. (coordinator): The North (1985). The Collected Research Studies: Royal Commission on the Economic Union and Development Prospects for Canada, volume 70; University of Toronto Press (Toronto, Buffalo, London); 181 pages; at pages 147-148. Also quoted in Pharand D. "Canada's Jurisdiction in the Arctic" Dalhousie Law Journal, vol. 7, no. 3, Oct. 1983; p. 315-342; at p. 329.

<sup>42</sup>Herman, Lawrence L. "Proof of Offshore Territorial Claims in Canada," Supra note 26; at page 6. Also quoted in Pharand, D.: "Sovereignty and the Canadian North", Supra note 41, at p. 148.

<sup>43</sup>Herman, L.L. Ibid.; p. 7.

<sup>44</sup>Supra, note 23. Emphasis added.

<sup>45</sup>Establishing straight baselines is a simple procedure by which the coordinates are identified, plotted on a map and published, in this case, in the Canada Gazette. On September 10, 1985, by order in council (P.C. 1985-2739), the Government of Canada approved the geographical coordinates of points from which baselines may be determined around the Canadian Arctic Archipelago and published them in the Canada Gazette, Part II, Vol. 119, No. 20 at p. 3996, on September 10, 1985. See Appendix C.

<sup>46</sup>The Anglo-Norwegian Fisheries Case (1951), also referred to as the 1951 Fisheries Case.

<sup>47</sup>International Court of Justice Reports (1951); at p. 116.

<sup>48</sup>Hereinafter referred to as the 1958 Convention (see Appendix D) and the 1982 Convention on the new law of the sea. Relevant articles of the 1982 Convention are in Appendix E.

<sup>49</sup>The 1982 Convention, Part II, Section I, Article 7, paragraph 3, Appendix E.

<sup>50</sup>Ibid.; op. cit. (Paragraph 3).

<sup>51</sup>Pharand, Donat: "Sovereignty and the Canadian North," Supra note 41, at p. 152.

<sup>52</sup>Vanderzwaag, David and Pharand, D.: "Inuit and Ice: Implications for Arctic Waters", The Canadian Yearbook of International Law (1983); p. 53-84; at p. 64. It is further estimated that the length of the

baselines "would" vary -- this is not an actual estimate -- between 6 and 99 nautical miles (51 n. mi. for the Lancaster Sound line, 92 n. mi. for the Amundsen Gulf line, 99 n. mi. for the M'Clure Strait line and 62 n. mi. for the Borden-Ellef Riques line). The 1951 Fisheries case upheld a "liberal" application of lengths; moreover, fourteen states are using baselines in excess of 100 n. mi., Burma leading with one of 222.3 n. mi. in length. (Ibid.; at p. 67).

<sup>53</sup>Ibid.; p. 68.

<sup>54</sup>Pharand, D.: Supra, note 41; at p. 152.

<sup>55</sup>Pharand, Donat: Supra note 24, at p. 780.

<sup>56</sup>Convention, 1958, Article V, Paragraph 2; 1982 Convention, Part II, Article 8, Paragraph 2. Appendix C.

<sup>57</sup>Pharand, D. Supra note 24; at page 793. These words were spoken by the Prime Minister of Canada in 1969. Also in 1970, the Canadian Government confirmed "its determination to open up the Northwest Passage to safe navigation for shipping of all nations subject, however to necessary conditions required to protect the delicate ecological balance of the Canadian Arctic". Ibid.; p. 793.

<sup>58</sup>Quoted in Legault, L.H., Ibid.; at p. 322 (see note 17 Supra). In the July 31, 1985 News Release the Government has "reaffirmed Canada's longstanding commitment to facilitate safe navigation in the Arctic, subject to necessary conditions for preservation of its environment and the welfare of its inhabitants;" see Appendix A.

<sup>59</sup>Appendix B; see note 23.

### NOTES TO CHAPTER 3

<sup>60</sup>Olenicoff, S.M. Territorial Waters in the Arctic: the Soviet Position, Advanced Research Projects Agency. (Santa Monica, California: The Rand Corporation, 1972); no. R-907-ARPA; at p. 4. These coordinates represent the Arctic sector which the Soviets claim.

<sup>61</sup>The essential straits "to transit the Northeast Arctic Passage and those which, under certain conditions, may become essential, are included in Appendix f of this paper.

<sup>62</sup>Pharand, D.: The Law of the Sea of the Arctic, with Special Reference to Canada (1973); University of Ottawa Press (Ottawa); 367 p.; at p. 27.



<sup>63</sup>Butler, Ibid.; p. 150, note 1.

<sup>64</sup>Pharand, D.: Supra, note 62; at p. 28.

<sup>65</sup>Ibid.; p. 30.

<sup>66</sup>Bradshaw, Richard. "The Politics of Soviet Maritime Security: Soviet Legal Doctrine and the Status of Coastal Waters; Journal of Maritime Law and Commerce (1979). 10:3, p. 411-428 at p. 412.

<sup>67</sup>Quoted in Synhorst, Cap. G.E.: "Soviet Strategic Interest in the Arctic," US Naval Institute Proceedings, Naval Review, (1978); at p. 103.

<sup>68</sup>Bradshaw, Richard: "The Politics of the Soviet Maritime Security: Soviet Legal Doctrine and the Status of Coastal Waters", Journal of Maritime Law and Commerce (1979), 10:3, pp. 411-429, at p. 424.

<sup>69</sup>The major statutes referred to are: the 1909 Law on Extension of the Maritime Custom Zone; the 1921 Decree Concerning the Protection of Fisheries and Game Reserves in the Arctic Ocean and White Sea; the 1926 Decree on the Proclamation of Land and Islands located in the Northern Arctic Ocean as Territory of the USSR; the 1927 Regulations (Statute) for the Defense of the State Frontiers of the USSR (a 12 n. mile maritime zone against violation by foreign fleet); the 1960 Statute on the Protection of the state Border of the USSR. In Pharand: Ibid., p. 30-43.

<sup>70</sup>Butler, Ibid.; p. 87.

<sup>71</sup>Ibid.; p. 86.

<sup>72</sup>Smith, Brian: Ibid.; p. 619.

<sup>73</sup>English translation of the 1983 Soviet Rules was published in International Legal Materials, vol. XXIV, no. 6, November 1985. A copy is attached in Appendix G of this paper.

<sup>74</sup>Juda, Lawrence: "The Exclusive Economic Zone: Computability of National Claims and the UN Convention on the Law of the Sea," Ocean Development and International Law, Volume 16, number 1, 1986; p. 1-58; at p. 38, and at p. 54, note 83.

<sup>75</sup>Soviet Statutes and Decisions, Vol. III, no. 4, at p. 9 (Summer 1967), quoted in Pharand, Ibid.; note 92 on p. 31, and p. 125. Also cited in Butler, W. Ibid.; at p. 72, and in Smith, Brian: Supra, note 18; at p. 617. This 1926 decree has often been referred to by Soviet officials: "Capt. P.D. Milovsky and Justice-Col. G.A. Glazunov, writing in the June 1970 issue of Morskoy Sbornik, the official journal of the

Soviet Navy, state: 'The most important declaration of rights by the Soviet Government in regard to Arctic Territories is the Decree of the Central Executive Committee of the USSR date 15 April 1926, which established the geographical boundaries of the Soviet sector of the Arctic as being between the meridians of 32° 4' 35" E and 160° 49' 30" W. Within the limits of this sector, the Soviet Union exercises full sovereignty over all lands and islands situated in the Arctic Ocean to the north of the USSR coast and as far as the North Pole.'" in Olenicoff: Ibid.; at p. 16.

<sup>76</sup>Pharand, Ibid. at p. 124-25; and Kurt M. Shusterich: "International Jurisdictional Issues in the Arctic Ocean" in W.E. Westermeyer and K.M. Shusterich (eds.): United States Arctic Interests (1984); at page 256.

<sup>77</sup>E.A. Korovin, a Soviet jurist, quoted in Olenicoff, Ibid.; at p. 8 and 9, and in Smith, B.: Ibid.; at p. 617. Although Soviet legal experts give such liberal interpretations, some express contrary views, as does V.L. Lakhtin: "We are of the opinion that floating ice should be assimilated legally to open polar seas, while ice formations that are more or less immovable should enjoy a legal status equivalent to polar territory," in Olenicoff, Ibid., p. 9.

<sup>78</sup>Butler, W.: Ibid.; p. 72-73. Also in 1938, the Soviet Taracouzio in Soviets in the Arctic (1938) states: "the convocation of an international conference appears not only a logical way conclusively to determine the legal status of the Arctic, but also an urgent necessity, if good will among states is to be preserved."

<sup>79</sup>Olenicoff: Ibid.; p. 17.

<sup>80</sup>The 1958 Convention entered into force on September 10, 1964.

<sup>81</sup>This legislation replaces the 1927 Statute (see Supra note 13) and defines 'state border' as the "line which determines the land and water territory of the USSR" (Pharand: Ibid.; p. 33).

<sup>82</sup>"Coastal sea waters, 12 nautical miles in breadth... shall constitute the territorial waters of the USSR...The line of the farthest extremity of territorial waters shall constitute the Border of the USSR at sea" (article 3 of the 1960 Statute); Ibid.; p. 33. Also in Butler, W.: Ibid.; p. 93.

<sup>83</sup>Butler, W.: Ibid.; p. 123.

<sup>84</sup>Schusterich; Ibid.; p. 260. Also in L.M. Alexander: "The Ocean Enclosure Movement: Inventory and Prospect," San Diego Law Review (1983), vol. 20, no. 3, at p. 575; and in Olenicoff: Ibid.; p. 13.



<sup>85</sup>The relevant article (16) of Soviet Statutes and Decisions states:  
"Foreign warships shall pass through territorial and enter internal sea waters of the USSR in accordance with the previous authorization of the government of the USSR...Foreign submarines whose arrival in territorial and internal sea waters of the USSR has been authorized must only navigate on the surface" quoted in Pharand: Supra, note 62; at p. 34.

<sup>86</sup>Synhorst, Cap. Y.E. "Soviet Strategic Interest in the Arctic"; at p. 100.

<sup>87</sup>Olenicoff, Ibid., p. 22. It should be noted that the USSR is signatory to the 1982 Convention on the Law of the Sea, and that article 17 allows for a right of innocent passage in a state's territorial sea, as long as it is "continuous and expeditious" (article 18.2) and is not "prejudicial to peace, good orders and security of coastal state" (article 19.1).

<sup>88</sup>The 1982 Convention specifies the methods by virtue of which a state may claim waters as internal: by drawing straight baselines and by establishing that the "claimed internal" waters are historic waters as in the case of bays (article 10); the Convention does not deal with other cases of 'historic' waters, nor does it explain or define 'historic'.

<sup>89</sup>Quoted in Pharand: Ibid.; p. 38; in Butler: Ibid.; p. 92, and in Olenicoff: Ibid.; p. 25.

<sup>90</sup>Olenicoff: Ibid.; p. 25.

<sup>91</sup>Olenicoff: Ibid.; he quotes the Soviets experts Taracouzio and Korovin, at page 26.

<sup>92</sup>Bradshaw, R.E.: Ibid.; p. 422.

<sup>93</sup>Pharand: Ibid.; p. 123.

<sup>94</sup>Butler: Ibid.; p. 82.

<sup>95</sup>Pharand: Ibid.; p. 121.

<sup>96</sup>In Olenicoff: Ibid.; p. 28.

<sup>97</sup>Pharand says: "[The USSR] would have to show that it has exercised exclusive control over those seas and that foreign states, in particular the US, have manifested an acquiescence in this control." Ibid.; p. 123.

<sup>98</sup>Odnopozov quoted in Butler: Ibid.; at p. 87- .

<sup>99</sup>See Appendix H for USSR Declaration 4604.

<sup>100</sup>See Appendix H for USSR Declaration 4450.

#### NOTES TO CHAPTER 4

<sup>101</sup>Barbara Johnson and Mark W. Zaker (eds.): Canadian Foreign Policy and the Law of the Sea (1977); University of British Columbia Press (Vancouver), 387 pp., at page xix: coastal states are those which border the ocean and which "do not possess capabilities to engage in major commercial enterprises or military activities in large areas of the world's seas (long-distant fishing fleets, ocean-ranging shipping, seabed mining activities, large oceanographic research programs, and ocean-ranging naval forces)". Maritime states possess the capabilities of such ocean-ranging activities.

<sup>102</sup>The United States has ratified the 1958 Convention, but is not signatory to the 1982 Convention.

<sup>103</sup>Gold, E.: "Vessel Traffic Services", The Journal of Navigation, volume 38, no. 1, 1985; page 71-76, at p. 72.

<sup>104</sup>The 1982 Convention consists of 446 articles under 17 part headings and includes 8 annexes. In Haines, Steven: "The Evolving Law of the Sea", The Journal of Navigation, vol. 38, no. 2, May 1985; p. 244-256, at p. 246.

<sup>105</sup>For accounts of Soviet's naval build-up during the 1960's, see: Janis, Mark W.: Seapower and the Law of the Sea (1976) (Levington Books: Mass.) at pages 23 to 38 on soviet Naval interests; McGuire, Michael (ed.): Soviet Naval Developments (1976) Praeger Publishers (New York, London) 554 pages; Ostreng, Willy "The Strategic Balance and the Arctic Ocean: Soviet Options," Cooperation and Conflict, XII, 1977, p. 41-62.

<sup>106</sup>Allison, Anthony "The Soviet Union and UNCLOS III: Pragmatism and Policy Evolution", Ocean Development and International Law, vol. 16, no. 2, 1986, p. 109-136; at page 117.

<sup>107</sup>Ibid.; p. 131.

<sup>108</sup>Comments from unidentified American officials closely involved in UNCLOS III negotiations, quoted in Allison: Ibid.; at page 118.

<sup>109</sup>See Allison: Ibid.; p. 118.



- <sup>110</sup>Article 234, 1982 Law of the Sea Convention, in Appendix E of this paper.
- <sup>111</sup>Barbara Johnson: "Canadian Foreign Policy" p. 52-99 in Johnson, Barbara and Zacher, Mark W: Ibid.; at p. 92.
- <sup>112</sup>Legault, L.H.: Paper presented to the Dalhousie University Conference on the Future of the Offshore, "The Impact of Canadian Fisheries Diplomacy," (1977), February 25 (Halifax, Nova Scotia), at p. 4.
- <sup>113</sup>The 1982 Convention, Article 217; Appendix E.
- <sup>114</sup>Ibid.; Article 200; Appendix E.
- <sup>115</sup>Ibid.; Article 211 and 211(6); Appendix E.
- <sup>116</sup>Ibid.; Article 234; Appendix E.
- <sup>117</sup>Pharand, D.: "The Legal Regime of the Arctic", Ibid.; at p. 749-750.
- <sup>118</sup>Pharand, D.: "Canada's Jurisdiction in the Arctic", Ibid.; p. 324. Further, the United States and Norway have disapproved of its use as a basis to claim jurisdiction over land, and Denmark refused to rely upon it in its dispute over Greenland with Norway before the International Court of Justice in 1933.
- <sup>119</sup>Pharand, D.: The Law of the Sea of the Arctic, Ibid.; at p. 117.
- <sup>120</sup>Supra note 17, at page 799.
- <sup>121</sup>The Peter the Great Bay has a closing line measuring 108 n. miles at its entrance, and was designated as a historical bay by Soviet legislation in 1957: Butler, W.E. Ibid.; at p. 92.
- <sup>122</sup>Smith, Brian: Supra, at p. 618.
- <sup>123</sup>The 1958 Convention elucidates the straight baseline system in Article VII. See Appendix D.
- <sup>124</sup>The 1982 Convention reaffirms the straight baseline provisions in Article 7 of Part I. See Appendix E.
- <sup>125</sup>See Article VII of the 1958 Convention in Appendix D and Article 10, Part II of the 1982 Convention in Appendix E.

<sup>126</sup>Part II, Article 10, paragraph 6 says that "the foregoing provisions do not apply to so-called "historic" bays or in any case where the system of straight baselines provided for in Article 7 is applied." Also Article 46(b), Part IV refers to archipelagic historic waters; these archipelagic provisions could be referred to by analogy. Appendix E.

<sup>127</sup>The exclusive authority and control by Canada, including the occupation by the Inuit population and their usage of land and ice areas of the Arctic Archipelago since time immemorial could be established. See Vanderzwaag, David and Pharand, Donat: "Inuit and Ice: Implications for Arctic Waters," The Canadian Yearbook of International Law (1983); at p. 53-84.

<sup>128</sup>Pharand, D. & L.H. Legault: Northwest Passage: Arctic Straits (1984); at p. 89.

<sup>129</sup>Professor J.N. Moore, quoted in Pharand and Legault: op. cit.; p. 89.

<sup>130</sup>Pharand and Legault: Ibid; p. 90.

<sup>131</sup>Op. cit.; at p. 90.

<sup>132</sup>The 1982 Convention, Part III, Section 2, Article 37; Appendix E.

<sup>133</sup>Pharand & Legault: Ibid, p. 99.

<sup>134</sup>See note 20 Supra. Also, this action could imply that Canada somewhat recognized that a portion of the Parry Channel, through the M'Clure Strait, was indeed a strip of high seas.

<sup>135</sup>Pharand & Legault: Ibid.; p. 101.

<sup>136</sup>Other Canadian legal experts have a different opinion, namely, Maxell Cohen, who is quoted in the Toronto Star, August 12, 1985 p. B1: "[An] argument in Canada's favor is that the Beaufort Sea itself may be defined as an area that isn't part of the high seas, so that the Northwest Passage would not be from one part of the high seas to another."

<sup>137</sup>Pharand, D.: "The Northwest Passage in International Law", The Canadian Yearbook of International Law 1979; p. 110.

<sup>138</sup>Pharand & Legault: Ibid.; p. 92.

<sup>139</sup>Ibid.; p. 101.



<sup>140</sup>During 80 years, there were 11 foreign transits. Ibid.; p. 102. It is nonetheless interesting to note that the 1979 statistics for traffic in the NWP amounted to 18 voyages: an increase of about 125% over a five year period (see note no. 137, Supra at p. 110 to 112 for listing of crossings). If the 1985 known crossings (Polar Sea, two Canadian vessels and a Cruise Ship are added, the percentage of increase over a six year period reaches 200%.

<sup>141</sup>Professor R.R. Baxter, author of The Law of International Waterways, quoted in Pharand & Legault, Ibid.; p. 102.

<sup>142</sup>Pharand & Legault, Ibid.; Chapter 5, p. 71 to 87, deals with marine transportation proposals for the NWP and the support systems for the waterway.

<sup>143</sup>Pharand and Legault: Ibid.; p. 87.

<sup>144</sup>Butler: Ibid.; p. 136.

<sup>145</sup>See Chapter 3, note 25.

<sup>146</sup>Butler: Ibid.; p. 95.

<sup>147</sup>Pharand, D.: "The Legal Regime of the Arctic"; Ibid.; p. 792.

<sup>148</sup>Butler: Ibid.; p. 2.

<sup>149</sup>The 1982 Convention, Part IV, Article 38, paragraph 1, Appendix E.

<sup>150</sup>Ibid.; Part IV, Article 38, paragraph 2, Appendix E.

<sup>151</sup>The corresponding Soviet statutes are: 1) The 1926 Decree on the Proclamation of Lands and Islands located in the Northern Arctic Ocean as territory of the USSR; 2) The 1960 Statute on the Protection of the State Border of the USSR; 3) The 1971 Statute on the Administration of the Northern Sea Route Attached to the Ministry of the Maritime Fleet; 4) The 1984 Presidium of the Supreme Soviet Decree Establishing a 200 n. mile EEZ; 5) The 1983 Rules for Navigation and Sojourn of Foreign Warships in Territorial and Internal Waters and Ports of the USSR; 6) The 1984 and 1985 Decrees of the USSR Council of Ministers - Declarations no. 4604 and 4450. See Appendix F.

<sup>152</sup>The corresponding Canadian legislative measures are: 1) The 1970 Arctic Waters Pollution Prevention Act; 2) The 1970 Amendment to the Territorial Sea and Fishing Zone Act; 3) The 1976 Order in Council establishing the 200 n. mile Exclusive Fisheries Zone; 4) The 1985 Canadian Laws Application Act; 5) The 1985 Territorial Sea Geographical Coordinates (Area 7) Order.

<sup>153</sup>Pharand: Ibid.; p. 799.

<sup>154</sup>1982 Convention, Part II, Article 8, paragraph 2, Appendix C.

#### NOTES TO CHAPTER 5

<sup>155</sup>See Appendix I for the 1983 Presidential Proclamation as well as for the accompanying Statement.

<sup>156</sup>Colson, David A.: "Political and Boundary Issues Affecting Arctic Energy Resources" Comments of David A. Colson before the 18th Annual Law of the Sea Institute September 26, 1984. Mimeograph copy. Office of the Legal Advisor Department of State (Washington, D.C.).

<sup>157</sup>Ibid.; p. 8.

<sup>158</sup>Ibid.; p. 9.

<sup>159</sup>Ibid.; p. 10.

<sup>160</sup>Ibid.; p. 11.

<sup>161</sup>Ibid.; p. 17 to 21.

<sup>162</sup>Ibid.; p. 22.

<sup>163</sup>Supra, note 137.

<sup>164</sup>As mentioned earlier, Supra, note 83, the Vilkitskii Straits and the Karskiye Vovota Strait are those "essential" straits to traverse the NNSR.

<sup>165</sup>See account in Synhorst: Ibid.; p. 102. Richard Petrow, author of Across the top of Russia, was aboard the icebreaker and he deplores US attitude: "Our primary mission had been passage through waters hither to restricted to Russian vessels. That mission had been aborted as much if not more by the timidity of the United States State Department than by the intransigence of the Soviet Union. In the event that the Soviet Union ever does reverse its policy and declare its polar seas open to all, the point nevertheless will have been made: In the year 1965, the Soviet Union objected to an American vessel making the voyage from one great ocean of the world to another, and the United States bowed to that objection..."

<sup>166</sup>The New York Times, "2 Icebreakers off to Attempt First Arctic Circumnavigation," August 17, 1967, p. A-1.



<sup>167</sup>The New York Times, "US Cancels Arctic Expedition As Soviet Bars Strait to Ships" by Peter Grose, September 1, 1967 at page 1, col. 6. For full account see also p. 8, col. 3 to 6.

<sup>168</sup>"Soviet Union Bars Completion of US Scientific Voyage" The Department of State Bulletin, The Official Weekly Record of United States Foreign Policy, vol. LVII, no. 1473, September 18, 1967, p. 362. See also, supra note 71.

<sup>169</sup>Supra, note 18.

<sup>170</sup>Supra, note 20. At this point, it should be mentioned that the US seems to have a "challenge" program by virtue of which, periodically and according to whatever the geopolitical situation dictates, 'internal' waters claims by coastal states are challenged by US incursion in those waters so as to ascertain to the international community of nations that America does not acquiesce to what it considers outrageous claims. The US challenge of the Libyan Gulf of Sidre is the latest, but the 'geopolitical' context is so much more complicated that comparative purposes are not warranted, except to highlight that the challenge program seems to exist, and in the Libyan case, it unfolded both in 1981 and 1986.

<sup>171</sup>Daniel Lawlar, Spokesman for the US State Department said: "We look at the Northwest Passage as a strait linking two parts of the high seas, and it is of extreme importance to us to have free transit through straits in normal modes of passage," in Yaffe, Barbara: "Canada to Launch Sovereignty Review," The Globe and Mail, August 2, 1985, p. 1.

<sup>172</sup>The Toronto Star, August 3, 1985, at p. A1 and A4: "Ottawa 'satisfied' with voyage as Polar Sea enters our waters": "Ottawa has sent a diplomatic note to Washington expressing 'deep regret' over the American position, and in apparent attempt to diffuse the situation, External Affairs Minister Joe Clark said Canada had given permission for the voyage."

<sup>173</sup>July 31, 1985 News Release, #85/114, Appendix A, p. 2. Also "Leonard Legault, legal adviser to External Affairs, said "the two countries have agreed to disagree on sovereignty rights over the Arctic waterway, in Yaffe, Barbara "Canadians on ship to have no authority", The Globe and Mail, Thursday, August 1, 1985, at page 1 and 2.

<sup>174</sup>Gwyn, Richard: "What's 'special' about our US relationship?", The Sunday Star, (Toronto), August 4, 1985, p. F4: "The 'special' relationship that Prime Minister Mulroney has so proudly developed with President Ronald Reagan is the source of the loss of nerve....Nor has it earned Mulroney any special treatment in the affair of the Polar Sea...What is critical is that the 'special relationship' is becoming a millstone around the government's neck...It's a difficult millstone to



get rid of. If Mulroney now announced that the special relationship was over, his critics would claim his policy had failed, just as they now do each time an incident like the Polar Sea occurs." Also: "Prime Minister Mulroney...was nowhere to be seen. Perhaps he was embarrassed that the special relationship he had been cultivating with Washington was not looking so special after all" in The Gazette (Montreal), August 8, 1985, at page B-2.

175 The Citizen (Ottawa), Thursday, August 1, 1985: "Canada saves face in sovereignty row over US ship's trip". The article states: "...in an apparent face-saving gesture the Canadian government announced Wednesday it has authorized the American icebreaker Polar Sea to travel through the Northwest Passage, even though the United States never asked permission."

176 Yaffee, Barbara: Ibid., at p. 1 and 2: The Globe and Mail, Thursday, August 1, 1985 "The US icebreaker Polar will take two Canadian Coast Guard captains aboard tomorrow as it makes its way through Arctic waters but only 'as a friendly gesture' to Canada. US Coast Guard Captain J.H. Wubbold said...that, despite what External Affairs Minister Joe Clark may have said about Canadian observers guiding the US ship through Canadian waters, the two Canadians will be nothing more than invited guests....when asked if the two captains would have any authority to issue any instructions whatever while aboard the ship, Capt. Wubbold said: 'Absolutely not. Regardless of what the External Affairs Minister said, there is no implication on either side that either captain is coming aboard as adviser to our captain. Because that is just not the case.' Emphasis added.

177 It is in the context of a discussion on "US Navigational Rights," Ambassador Djalal made those comments, in Van Dyke, Jon M. (ed.): Consensus and Confrontation: The United States and the Law of the Sea Convention (1984) - A workshop of the Law of the Sea Institute, January 9-13, 1984. Published by the Law of the Sea Institute, University of Hawaii (Honolulu); 554 page; at page 301.

178 See Appendix J.

179 Supra, note 45; and see also Appendix C.

180 Cowan, Peter: "Soviets enforce Arctic sovereignty", The Citizens (Ottawa); August 10, 1985, at p. B-12: "One way to enforce Arctic sovereignty is to have military clout. The Soviet Union does. Canada, which has no armed ships capable of operating in the Northwest Passage does not. The Soviets, who have impressive sea and air power covering the Arctic waters, have twice stopped American incursions into their Northern Sea Route, sometimes called the Northeast Passage".



<sup>181</sup>Oberdorfer, Don and Denton, Herbert H.: "US-Canada Agreement on Acid Rain is near" in The Washington Post; Wednesday, March 19, 1986; at page A3.

<sup>182</sup>Jonas, George "Making Canadian Waters Safe for US Ships and Soviet Subs", The Wall Street Journal, September 27, 1985; at p. 29. "Let alone the indignation of ordinary Canadians" could have been added.

<sup>183</sup>Warburton, Wendy "US bungled Arctic voyage: envoy" in The Citizens (Ottawa); September 11, 1985, at page A1 and A15.

<sup>184</sup>Simpson, Jeffrey: "Tell it to the Court", The Globe and Mail, August 2, 1985, at p. 6: "Our [Canada's] meagre military capabilities off all three coasts constitute a national disgrace."

#### NOTES TO CHAPTER 5

<sup>185</sup>Carter, Frank: "Sovereignty in Arctic Waters;" Policy Options Politiques; Volume 6, November 1985; (Ottawa, Canada) p. 4-8; at p. 8.

<sup>186</sup>Eayrs, James: In Defense of Canada, volume 111: Peacekeeping and deterrence, (1972); University of Toronto Press (Toronto), at page 369; quoted in Johnson, B. and Middlemis, D. "Canada's 200-mile Fishing Zone: the Problem of Compliance", Ocean Development and International Law Journal, Volume 4, Number 1, p. 67-110, at p. 105.

<sup>187</sup>Article 123 of the Law of the Sea.

APPENDIX A

July 31, 1985 News Release "Voyage of the Polar Sea"  
and Fact Sheet

Source: Government of Canada  
Department of External Affairs  
Ottawa (Ontario)  
Canada  
News Release number 85/114





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# news release

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Date

For release

July 31, 1985.

85/114

## VOYAGE OF THE POLAR SEA

The Right Honourable Joe Clark, Secretary of State for External Affairs, the Honourable Don Mazankowski, Minister of Transport and the Honourable David Crombie, the Minister of Indian and Northern Affairs, announced today that Canada has authorized the United States Coast Guard icebreaker Polar Sea to conduct a voyage through Canada's Arctic waters between August 1 and 15, 1985. The voyage will proceed with Canadian support and participation.

Canada and the United States have consulted closely regarding plans and arrangements for the voyage.

The Government of Canada has made clear that the waters of the Arctic archipelago, including the Northwest Passage, are internal waters of Canada and fall within Canadian sovereignty. At the same time, the Government has reaffirmed Canada's longstanding commitment to facilitating safe navigation in the Arctic, subject to necessary conditions for the preservation of its environment and the welfare of its inhabitants. These conditions have been met.

The Government of Canada was informed of plans for the proposed voyage by the Government of the United States on May 21. In conveying this information, the United States proposed that the voyage proceed on a cooperative basis, with Canadian participation on board the Polar Sea.

.../2

While the United States has made known that it does not share Canada's view regarding the status of these waters, it has assured the Government of Canada that the purpose of the voyage is solely operational, to reduce the Polar Sea's sailing time to Alaska. The United States has also formally advised the Government of Canada that the transit, and the preparations for it, are without prejudice to the position of either country regarding the Northwest Passage. It is on this basis that consultations and the exchange of information have proceeded, and that Canada has agreed to cooperate in the voyage.

At the same time, however, the Government of Canada has expressed to the United States its deep regret that the United States over a period of many years has been unwilling to accept Canada's sovereignty over the waters of the Arctic archipelago. While Canada recognizes that the United States view derives from long-held general concerns about global freedom of navigation, Canada nevertheless considers that the evolution of international law fully supports the Canadian position.

The Polar Sea will enter the Northwest Passage at Lancaster Sound on or about August 1, 1985 and proceed through Viscount Melville Sound, exiting the Passage through Prince of Wales Strait and Amundsen Gulf.

Canada has sought and obtained detailed information and specific assurances on such matters as the routeing of the vessel, its design, construction and equipment, and other requirements for the protection of the environment, including contingency plans and liability for costs and damage in the event of a pollution incident. The Canadian Coast Guard has examined the drawings of the ship and has concluded it substantially meets Canadian standards.

The Canadian authorities are satisfied that on the basis of the information and assurances they have obtained, the United States has taken the necessary measures to ensure that the Polar Sea complies with standards substantially equivalent to those prescribed under Canadian regulations, and that all required precautions have been taken to reduce any danger of pollution arising from the voyage.



An order in council in respect of the Polar Sea is being issued pursuant to subsection 12(2) of the Arctic Waters Pollution Prevention Act. This subsection of the Act was expressly intended to provide vessels owned or operated by a sovereign power other than Canada, with an exemption from regulations relating to design, construction, equipment and manning of vessels, where the government is satisfied that equivalent standards are met and sufficient pollution protection is provided.

Canadian officials will be on board the Polar Sea during its voyage through Canadian waters as observers and advisors. Mr. Crombie has directed his Inuvik District Manager to participate in the voyage. Transport Canada will be represented by two Canadian Coast Guard icebreaker captains.

Technical support is being provided by the Canadian Coast Guard in the form of routeing advice, communications, and ice reconnaissance. Canadian Forces aircraft will monitor the progress of the Polar Sea.

If further information is required please contact Mr. L.H. Legault (995-8901) or Mr. B.M. Mawhinney (992-2728).

POLAR SEA VOYAGE  
FACT SHEET

SHIP

The Polar Sea is 122 metres in length, displaces 13,000 tons and 18,000-60,000 shaft horse power. She is designed to operate in all ice conditions and is deemed to be designed, constructed and equipped to standards substantially equivalent to Arctic Class 6 standards (icebreakers are classified according to the thickness of ice through which they are capable of navigating). The Polar Sea is one of two polar icebreakers in the United States Coast Guard fleet which are the largest and most powerful icebreakers outside of the Russian fleet. The Polar Sea can break two metres of ice at three knots continuously.

ROUTE

The Polar Sea will depart Thule, Greenland on August 1, 1985 and transit Canadian waters through Lancaster Sound and Viscount Melville Sound, and exit Canadian waters through Prince of Wales Strait and Amundsen Gulf. The voyage through Canadian waters will take approximately 12 days.

CANADIAN PARTICIPATION

Two Canadian Coast Guard icebreaker captains, and the Inuvik District Manager of the Department of Indian and Northern Affairs will be on board the vessel during the transit. They will serve as observers and advisors.

CANADIAN SUPPORT

Canadian Hydrographic charts and publications covering navigation through Arctic waters have been made available to the United States Coast Guard for use aboard the Polar Sea.

The Polar Sea will make regular position reports to NORDREG Canada in accordance with Canadian Coast Guard Notice to Mariners. NORDREG (the Canadian Coast Guard's ship reporting system) will provide information concerning ice, weather and traffic. The Canadian Coast Guard will also be providing routing advice, communications and ice reconnaissance services to supplement those provided by the Department of the Environment.

MONITORING

Canadian Forces aircraft will conduct regular flights to monitor the progress of the voyage. Canadian Forces aircrew are trained in ice reconnaissance and pollution protection.



### OPERATIONAL VOYAGE

The United States has expressly stated that the voyage is motivated solely by operational requirements related to reducing the Polar Sea's transit time to Alaska. Because of unexpected repair work on two other U.S. Coast Guard icebreakers, the remaining vessels are on tight schedules. After assisting in a re-supply mission to Thule, Greenland, the Polar Sea must proceed to the Beaufort Sea by the shortest route in order to meet its operating requirements.

### ARCTIC WATERS POLLUTION PREVENTION ACT

The Act, passed in 1970, requires that waters of the Canadian Arctic be navigated only in a manner that takes cognizance of Canada's responsibility for the welfare of the Inuit and other inhabitants of the Canadian Arctic and the preservation of the peculiar ecological balance that now exists in the water, ice and land areas of the Canadian Arctic.

Section 12(2) of the Act, which deals with foreign government-owned ships, provides as follows:

"(2) The Governor in Council may by order exempt from the application of any regulations made under subsection (1) any ship or class of ship that is owned or operated by a sovereign power other than Canada where the Governor in Council is satisfied that appropriate measures have been taken by or under the authority of that sovereign power to ensure the compliance of such ship with, or with standards substantially equivalent to, standards prescribed by regulations made under paragraph (1)(a) that would otherwise be applicable to it within any shipping safety control zone, and that in all other respects all reasonable precautions have been or will be taken to reduce the danger of any deposit of waste resulting from the navigation of such ship within that shipping safety control zone."

Section 12(1) of the Act provides for the adoption of regulations relating to the design, construction, equipment and manning of vessels, as well as pilotage requirements.

### ICE COVERED WATERS AND THE LAW OF THE SEA

Since 1970, the development of international law has strengthened Canada's right to exercise functional jurisdiction in Arctic waters. Specifically, at the initiative of Canada,

the 1982 Law of the Sea Convention provides in Article 234 that coastal states may adopt and enforce special regulations for the protection of ice-covered waters. This article, which had the broad support of the Law of the Sea Conference, gives validity in international law to the Arctic Waters Pollution Prevention Act. The Convention also provides, however, that Article 234 and other provisions relating to the protection and preservation of the marine environment do not apply to any warship or any vessel owned or operated by a state. Notwithstanding this sovereign immunity, each state must ensure that its vessels act in a manner consistent with the Convention, so far as may be reasonable and practicable.



APPENDIX B

Statement Concerning Arctic Sovereignty

Source: International Legal Materials  
Volume XXIV, Number 6, November 1985

CANADA: STATEMENT CONCERNING ARCTIC SOVEREIGNTY\*  
[September 10, 1985]

Mr. Speaker,

Sovereignty can arouse deep emotion in this country. That is to be expected, for sovereignty speaks to the very identity and character of a people. We Canadians want to be ourselves. We want to control our own affairs and take charge of our own destiny. At the same time, we want to look beyond ourselves and to play a constructive part in a world community that grows more interdependent every year. We have something to offer and something to gain in so doing.

The sovereignty question has concerned this government since we were first sworn in. We have built national unity, we have strengthened the national economy, because unity and strength are hallmarks of sovereignty, as they are hallmarks of this government's policy and achievements.

In unity and strength, we have taken action to increase Canadian ownership of the Canadian petroleum industry. We have declared a Canadian ownership policy in respect of foreign investment in the publishing industry. We have made our own Canadian decisions on controversial issues of foreign policy — such as Nicaragua and South Africa. We have passed the Foreign Extraterritorial Measures Act to block unacceptable claims of jurisdiction by foreign governments or courts seeking to extend their writ to Canada. We have arrested foreign trawlers poaching in our fishing zones. We have taken important steps to improve Canada's defences, notably in bolstering Canadian forces in Europe and in putting into place a new North Warning System to protect Canadian sovereignty over our northern airspace. And we have reconstructed relations with traditional friends and allies, who have welcomed our renewed unity and strength and the confidence they generate.

In domestic policy, in foreign policy, and in defence policy, this government has given Canadian sovereignty a new impetus within a new maturity. But much remains to be done. The voyage of the Polar Sea

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\*[Reproduced from Statement 85/49, Statement in the House of Commons by the Secretary of State for External Affairs, September 10, 1985, provided by the Canadian Embassy, Washington, D.C.]

[The map at I.L.M. page 1728 is unofficial, although it shows the position of the baselines set forth in the Order-in-Council, cited as the Territorial Sea Geographical Coordinates (Area 7) Order, which lists the numerous coordinates.]

[The Territorial Sea and Fishing Zones Act appears at 9 I.L.M. 553 (1970). Documents establishing related fishing zones appear at 10 I.L.M. 438 (1971) and 15 I.L.M. 1372 (1976).]

[The Canadian withdrawal of the 1970 reservation to Canada's acceptance of the compulsory jurisdiction of the I.C.J. appears at I.L.M. page 1729.]



demonstrated that Canada, in the past, had not developed the means to ensure our sovereignty over time. During that voyage, Canada's legal claim was fully protected, but when we looked for tangible ways to exercise our sovereignty, we found that our cupboard was nearly bare. We obtained from the United States a formal and explicit assurance that the voyage of the Polar Sea was without prejudice to Canada's legal position. That is an assurance which the government of the day, in 1969, did not receive for the voyage of the Manhattan and of the two United States Coast Guard icebreakers. For the future, non-prejudicial arrangements will not be enough.

The voyage of the Polar Sea has left no trace on Canada's Arctic waters and no mark on Canada's Arctic sovereignty. It is behind us, and our concern must be what lies ahead.

Many countries, including the United States and the Federal Republic of Germany, are actively preparing for commercial navigation in Arctic waters. Developments are accelerating in ice science, ice technology, and tanker design. Several major Japanese firms are moving to capture the market for icebreaking tankers once polar oil and gas come on stream. Soviet submarines are being deployed under the Arctic ice pack, and the United States Navy in turn has identified a need to gain Arctic operational experience to counter new Soviet deployments.

Mr. Speaker,

The implications for Canada are clear. As the Western country with by far the greatest frontage on the Arctic, we must come up to speed in a range of marine operations that bear on our capacity to exercise effective control over the Northwest Passage and our other Arctic waters.

To this end, I wish to declare to the House the policy of this government in respect of Canadian sovereignty in Arctic waters, and to make a number of announcements as to how we propose to give expression to that policy.

---

Canada is an Arctic nation. The international community has long recognized that the Arctic mainland and islands are a part of Canada like any other. But the Arctic is not only a part of Canada. It is part of Canada's greatness.

The policy of this government is to preserve that greatness undiminished.

Canada's sovereignty in the Arctic is indivisible. It embraces land, sea, and ice. It extends without interruption to the seaward-facing coasts of the



Arctic islands. These islands are joined and not divided by the waters between them. They are bridged for most of the year by ice. From time immemorial Canada's Inuit people have used and occupied the ice as they have used and occupied the land.

The policy of this government is to maintain the natural unity of the Canadian Arctic archipelago, and to preserve Canada's sovereignty over land, sea, and ice undiminished and undivided.

That sovereignty has long been upheld by Canada. No previous government, however, has defined its precise limits or delineated Canada's internal waters and territorial sea in the Arctic. This government proposes to do so. An order in council establishing straight baselines around the outer perimeter of the Canadian Arctic archipelago has been signed today, and will come into effect on January 1, 1986. These baselines define the outer limit of Canada's historic internal waters. Canada's territorial waters extend 12 miles seaward of the baselines. While the Territorial Sea and Fishing Zones Act requires 60 days' notice only for the establishment of fisheries limits, we consider that prior notice should also be given for this important step of establishing straight baselines.

Canada enjoys the same undisputed jurisdiction over its continental margin and 200-mile fishing zone in the Arctic as elsewhere. To protect the unique ecological balance of the region, Canada also exercises jurisdiction over a 100-mile pollution prevention zone in the Arctic waters. This too has been recognized by the international community, through a special provision in the United Nations Convention on the Law of the Sea.

No previous government, however, has extended the application of Canadian civil and criminal law to offshore areas, in the Arctic and elsewhere. This government will do so. To this end, we shall give priority to the early adoption of a Canadian Laws Offshore Application Act.

The exercise of functional jurisdiction in Arctic waters is essential to Canadian interests. But it can never serve as a substitute for the exercise of Canada's full sovereignty over the waters of the Arctic archipelago. Only full sovereignty protects the full range of Canada's interests. This full sovereignty is vital to Canada's security. It is vital to Canada's Inuit people. And it is vital even to Canada's nationhood.

The policy of this government is to exercise Canada's full sovereignty in and over the waters of the Arctic archipelago. We will accept no substitutes.

The policy of this government is also to encourage the development of navigation in Canada's Arctic waters. Our goal is to make the Northwest Passage a reality for



Canadian and foreign shipping, as a Canadian waterway. Navigation, however, will be subject to the controls and other measures required for Canada's security, for the preservation of the environment, and for the welfare of the Inuit and other inhabitants of the Canadian Arctic.

In due course, the government will announce the further steps it is taking to implement these policies, and especially to provide more extensive marine support services, to strengthen regulatory structures, and to reinforce the necessary means of control. I am announcing today that the government has decided to construct a Polar Class 3 icebreaker. The Ministers of National Defence and Transport will shortly bring to Cabinet recommendations with regard to design and construction plans. The costs are very high, in the order of half a billion dollars. But this government is not about to conclude that Canada cannot afford the Arctic. Meanwhile, we are taking immediate steps to increase surveillance overflights of our Arctic waters by Canadian Forces aircraft. In addition, we are now making plans for naval activity in eastern Arctic waters in 1986.

Canada is a strong and responsible member of the international community. Our strength and our responsibility make us all the more aware of the need for cooperation with other countries, and especially with our friends and allies. Cooperation is necessary not only in defence of our own interests but in defence of the common interests of the international community. Cooperation adds to our strength and in no way diminishes our sovereignty.

The policy of this government is to offer its cooperation to its friends and allies, and to seek their cooperation in return.

We are prepared to explore with the United States all means of cooperation that might promote the respective interests of both countries, as Arctic friends, neighbours, and allies, in the Arctic waters of Canada and Alaska. The United States has been made aware that Canada wishes to open talks on this matter in the near future. Any cooperation with the United States, or with other Arctic nations, shall only be on the basis of full respect for Canada's sovereignty. That too has been made clear.

In 1970, the government of the day barred the International Court of Justice from hearing disputes that might arise concerning the jurisdiction exercised by Canada for the prevention of pollution in Arctic waters.

This government will remove that bar. Indeed, we have today notified the Secretary General of the United Nations that Canada is withdrawing the 1970 reservation to its acceptance of the compulsory jurisdiction of the World Court.



The Arctic is a heritage for the people of Canada. They are determined to keep their heritage entire.

The policy of this government is to give full expression to that determination.

We challenge no established rights, for none have been established except by Canada. We set no precedent for other areas, for no other area compares with the Canadian Arctic archipelago. We are confident in our position. We believe in the rule of law in international relations. We shall act in accordance with our confidence and belief, as we are doing today in withdrawing the 1970 reservation to Canada's acceptance of the compulsory jurisdiction of the World Court. We are prepared to uphold our position in that Court, if necessary, and to have it freely and fully judged there.

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In summary, Mr. Speaker, these are the measures we are announcing today:

1. immediate adoption of an order in council establishing straight baselines around the Arctic archipelago, to be effective January 1, 1986;
2. immediate adoption of a Canadian Laws Offshore Application Act;
3. immediate talks with the United States on cooperation in Arctic waters, on the basis of full respect for Canadian sovereignty;
4. an immediate increase of surveillance overflights of our Arctic waters by aircraft of the Canadian Forces, and immediate planning for Canadian naval activity in the Eastern Arctic in 1986;
5. the immediate withdrawal of the 1970 reservation to Canada's acceptance of the compulsory jurisdiction of the International Court of Justice; and [\*]
6. construction of a Polar Class 8 icebreaker and urgent consideration of other means of exercising more effective control over our Arctic waters.

These are the measures we can take immediately. We know, however, that a long-term commitment is required. We are making that commitment today.

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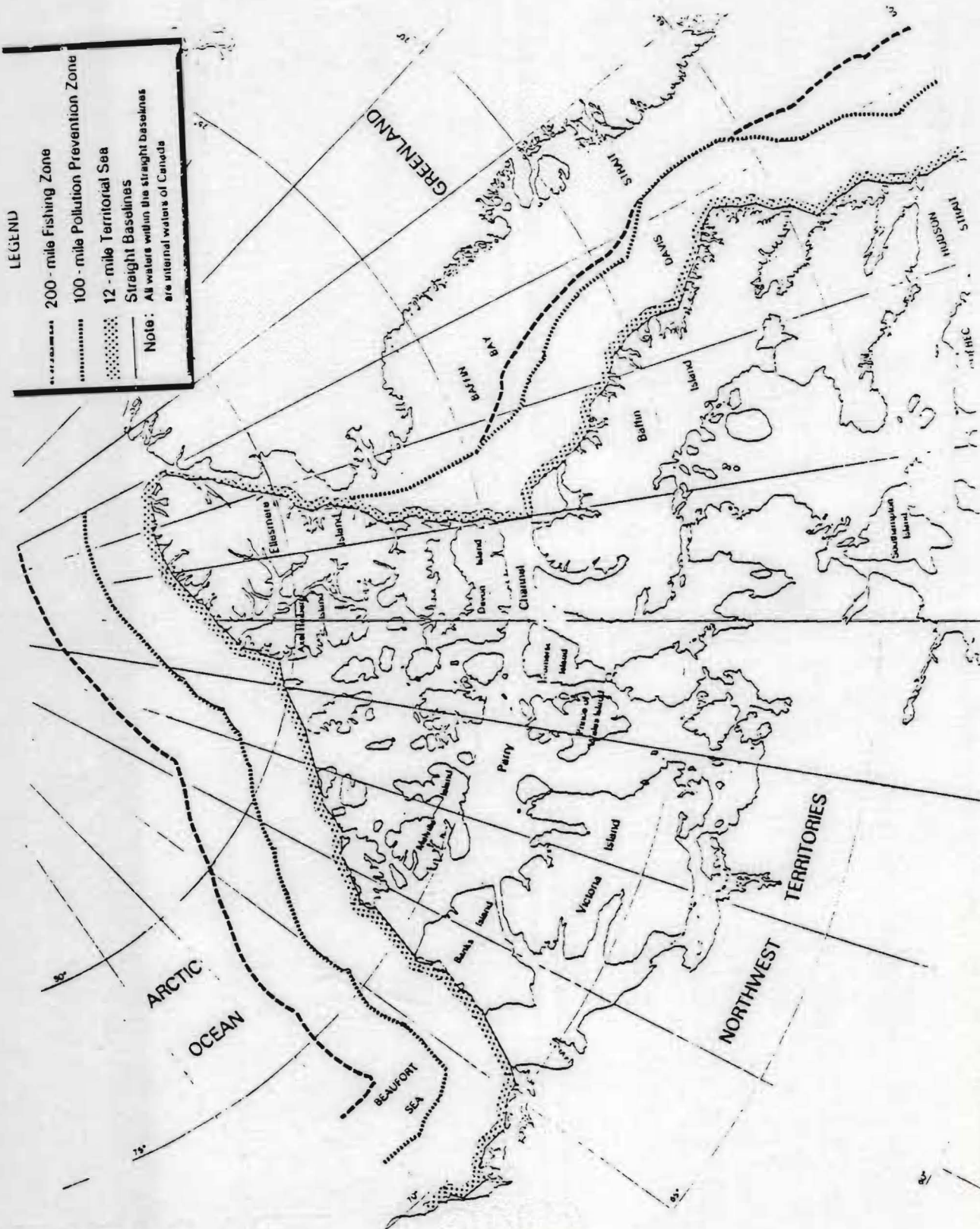
\*[See I.L.M. page 1729.]



LEGEND

200 - mile Fishing Zone  
100 - mile Pollution Prevention Zone  
12 - mile Territorial Sea

Straight Baselines  
Note: All waters within the straight baselines are internal waters of Canada



## APPENDIX C

### Territorial Sea Geographical Coordinates (Area 7) Order

#### Sources:

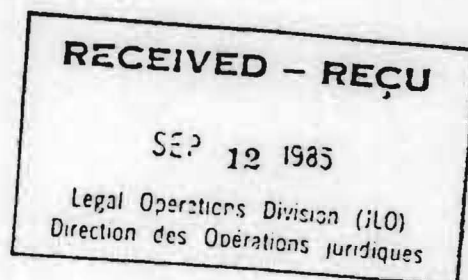
1. Government of Canada  
Privy Council Office  
Ottawa (Ontario)  
Canada
2. Canada Gazette, Part II, vol. 119, no. 20; p. 3996-4002





PRIVY COUNCIL • CONSEIL PRIVÉ

~~PK~~  
HS  
P.C. 1985-2739  
10 September, 1985



WHEREAS Canada has long maintained and exercised sovereignty over the waters of the Canadian Arctic archipelago.

THEREFORE, HER EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL, on the recommendation of the Secretary of State for External Affairs, pursuant to subsection 5(1) of the Territorial Sea and Fishing Zones Act, is pleased hereby to make the annexed Order respecting geographical coordinates of points from which baselines may be determined, effective January 1, 1986.

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CLERK OF THE PRIVY COUNCIL - LE GREFFIER DU CONSEIL PRIVÉ

ORDER RESPECTING GEOGRAPHICAL COORDINATES  
OF POINTS FROM WHICH BASELINES MAY BE DETERMINED

Short Title

1. This Order may be cited as the Territorial Sea Geographical Coordinates (Area 7) Order.

Interpretation

2. In this Order,

"Act" means the Territorial Sea and Fishing Zones Act; (loi)

"Area 7" means the Canadian Arctic Islands and Mainland and includes all islands and low-tide elevations adjacent to the Area; (region)

"C.H.S. Chart" means Canadian Hydrographic Service Chart.  
(carte S.H.C.)

General

3.(1) The lists of geographical coordinates of points set out in Schedules I, II and III are hereby issued as lists of geographical coordinates of points from which baselines may be determined pursuant to the Act in respect of Area 7.

(2) For the purposes of subsection (1), the geographical coordinates of points set out in columns II and III of an item of the schedules are those determined from the chart and edition set out in column IV of that item.

4.(1) In respect of the portion of Area 7 for which the geographical coordinates of points are listed in Schedule I, the baselines are straight lines joining the points so listed.

(2) In respect of the portion of Area 7 for which the geographical coordinates of points are listed in Schedule II, the baseline is the low-water line along the coast joining the points so listed.

(3) In respect of the portion of Area 7 for which the geographical coordinates of points are listed in Schedule III, the baselines are the low-water lines of the islands and of the low-tide elevations.



Registration  
SOR/85-872 10 September, 1985

Enregistrement  
DORS/85-872 10 septembre 1985

# TERRITORIAL SEA AND FISHING ZONES ACT

# LOI SUR LA MER TERRITORIALE ET LES ZONES DE PÊCHE

## Territorial Sea Geographical Coordinates (Area 7) Order

## Décret sur les coordonnées géographiques pour la mer territoriale (région 7)

P.C. 1985-2739 10 September, 1985

C.P. 1985-2739 10 septembre 1985

Whereas Canada has long maintained and exercised sovereignty over the waters of the Canadian Arctic archipelago:

Vu que le Canada exerce depuis longtemps sa souveraineté sur les eaux de l'archipel arctique canadien:

Therefore, Her Excellency the Governor General in Council, on the recommendation of the Secretary of State for External Affairs, pursuant to subsection 5(1)\* of the Territorial Sea and Fishing Zones Act, is pleased hereby to make the annexed Order respecting geographical coordinates of points from which baselines may be determined, effective January 1, 1986.

A ces causes, sur avis conforme du secrétaire d'État aux Affaires extérieures et en vertu du paragraphe 5(1)\* de la Loi sur la mer territoriale et les zones de pêche, il plaît à Son Excellence le Gouverneur général en conseil de prendre, à compter du 1<sup>er</sup> janvier 1986, le Décret concernant les coordonnées géographiques de points à l'aide desquelles des lignes de base peuvent être déterminées, ci-après.

### ORDER RESPECTING GEOGRAPHICAL COORDINATES OF POINTS FROM WHICH BASELINES MAY BE DETERMINED

### DECRET CONCERNANT LES COORDONNÉES GEOGRAPHIQUES DE POINTS A L'AIDE DESQUELLES DES LIGNES DE BASE PEUVENT ÊTRE DÉTERMINÉES

#### Short Title

#### Titre abrégé

This Order may be cited as the *Territorial Sea Geographical Coordinates (Area 7) Order*.

1. *Décret sur les coordonnées géographiques pour la mer territoriale (région 7)*.

#### Interpretation

#### Définitions

2. In this Order,

2. Les définitions qui suivent s'appliquent au présent décret.

"Act" means the *Territorial Sea and Fishing Zones Act*; (*Loi*)  
"Area 7" means the Canadian Arctic Islands and Mainland and includes all islands and low-tide elevations adjacent to the Area; (*région 7*)

«carte S.H.C.» Carte du Service hydrographique du Canada. (*C.H.S. Chart*)

«Loi» La *Loi sur la mer territoriale et les zones de pêche*. (*Act*)

"C.H.S. Chart" means Canadian Hydrographic Service Chart. (*carte S.H.C.*)

«région 7» Continent et îles de l'arctique canadien. La présente définition comprend toutes les îles et tous les hauts-fonds découvrants qui sont adjacents à la région 7. (*Area 7*)

#### General

#### Dispositions générales

3. (1) The lists of geographical coordinates of points set out in Schedules I, II and III are hereby issued as lists of geographical coordinates of points from which baselines may be determined pursuant to the Act in respect of Area 7.

3. (1) Les listes de coordonnées géographiques de points figurant aux annexes I, II et III sont établies comme listes de coordonnées géographiques de points à l'aide desquelles des lignes de base peuvent être déterminées, en vertu de la Loi, à l'égard de la région 7.

(2) For the purposes of subsection (1), the geographical coordinates of points set out in columns II and III of an item of the schedules are those determined from the chart and edition set out in column IV of that item.

(2) Pour l'application du paragraphe (1), les coordonnées géographiques de points visées aux colonnes II et III des annexes sont établies à l'aide des cartes S.H.C. dont le numéro et l'année figurent à la colonne IV.

\* R.S.C. 1970, c. 45 (1st Suppl.), s. 3

\* S.C. 1970, c. 45 (1<sup>re</sup> suppl.), art. 3

APPENDIX D

1958 Convention on Territorial Sea and Contiguous Zone



# Convention on the Territorial Sea and the Contiguous Zone

*[Note: This Convention, the Convention on the High Seas (Appendix J), the Convention on Fishing and Conservation of the Living Resources of the High Seas (Appendix K), and the Convention on the Continental Shelf (Appendix L) remained open for signature until October 31, 1958. The Convention on the Territorial Sea and the Contiguous Zone came into force on September 10, 1964; the Convention on the High Seas came into force on September 30, 1962; the Convention on Fishing and Conservation of the Living Resources of the High Seas came into force on March 20, 1966; and the Convention on the Continental Shelf came into force on June 10, 1964. The United States formally ratified all four Conventions on May 26, 1960.]*

*The States Parties to this Convention  
Have agreed as follows:*

## PART I: TERRITORIAL SEA

### SECTION I. GENERAL

#### ARTICLE I

1. The sovereignty of a State extends, beyond its land territory and its internal waters, to a belt of sea adjacent to its coast, described as the territorial sea.
2. This sovereignty is exercised subject to the provisions of these articles and to other rules of international law.

## ARTICLE II

The sovereignty of a coastal State extends to the air space over the territorial sea as well as to its bed and subsoil.

## SECTION II. LIMITS OF THE TERRITORIAL SEA

## ARTICLE III

Except where otherwise provided in these articles, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.

## ARTICLE IV

1. In localities where the coast line is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.

2. The drawing of such baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters.

3. Baselines shall not be drawn to and from low-tide elevations, unless light houses or similar installations which are permanently above sea level have been built on them.

4. Where the method of straight baselines is applicable under the provisions of paragraph 1, account may be taken, in determining particular baselines, of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by a long usage.

5. The system of straight baselines may not be applied by a State in such a manner as to cut off from the high seas the territorial sea of another State.

6. The coastal State must clearly indicate straight baselines on charts, to which due publicity must be given.

## ARTICLE V

1. Waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State.

2. Where the establishment of a straight baseline in accordance with

article 4 has the effect of enclosing as internal waters areas which previously had been considered as part of the territorial sea or of the high seas, a right of innocent passage, as provided in articles 14 to 23, shall exist in those waters.

## ARTICLE VI

The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.

## ARTICLE VII

1. This article relates only to bays the coasts of which belong to a single State.

2. For the purposes of these articles, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation.

3. For the purpose of measurement, the area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water marks of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semi-circle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water area of the indentation.

4. If the distance between the low-water marks of the natural entrance points of a bay does not exceed twenty-four miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters.

5. Where the distance between the low-water marks of the natural entrance points of a bay exceeds twenty-four miles, a straight baseline of twenty-four miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length.

6. The foregoing provisions shall not apply to so-called "historic" bays, or in any case where the straight baseline system provided for in article 4 is applied.



For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system shall be regarded as forming part of the coast.

#### ARTICLE IX

Roadsteads which are normally used for the loading, unloading and anchoring of ships, and which would otherwise be situated wholly or partly outside the outer limit of the territorial sea, are included in the territorial sea. The coastal State must clearly demarcate such roadsteads and indicate them on charts together with their boundaries, to which due publicity must be given.

#### ARTICLE X

1. An island is a naturally-formed area of land, surrounded by water, which is above water at high-tide.

2. The territorial sea of an island is measured in accordance with the provisions of these articles.

#### ARTICLE XI

1. A low-tide elevation is a naturally-formed area of land which is surrounded by and above water at low-tide but submerged at high tide. Where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea.

2. Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it has no territorial sea of its own.

#### ARTICLE XII

1. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The provisions of this paragraph shall not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision.

lying opposite to each other or adjacent to each other shall be marked on large-scale charts officially recognized by the coastal States.

#### ARTICLE XIII

If a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low-tide line of its banks.

### SECTION III. RIGHT OF INNOCENT PASSAGE

#### SUB-SECTION A. RULES APPLICABLE TO ALL SHIPS

#### ARTICLE XIV

1. Subject to the provisions of these articles, ships of all States, whether coastal or not, shall enjoy the right of innocent passage through the territorial sea.

2. Passage means navigation through the territorial sea for the purpose either of traversing that sea without entering internal waters, or of proceeding to internal waters, or of making for the high seas from internal waters.

3. Passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by *force majeure* or by distress.

4. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with these articles and with other rules of international law.

5. Passage of foreign fishing vessels shall not be considered innocent if they do not observe such laws and regulations as the coastal State may make and publish in order to prevent these vessels from fishing in the territorial sea.

6. Submarines are required to navigate on the surface and to show their flag.

#### ARTICLE XV

1. The coastal state must not hamper innocent passage through the territorial sea.

2. The coastal State is required to give appropriate publicity to any dangers to navigation, of which it has knowledge, within its territorial sea.



#### ARTICLE XVI

1. The coastal State may take the necessary steps in its territorial sea to prevent passage which is not innocent.

2. In the case of ships proceeding to internal waters, the coastal State shall also have the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to those waters is subject.

3. Subject to the provisions of paragraph 4, the coastal State may, without discrimination amongst foreign ships, suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security. Such suspension shall take effect only after having been duly published.

4. There shall be no suspension of the innocent passage of foreign ships through straits which are used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign State.

#### ARTICLE XVII

Foreign ships exercising the right of innocent passage shall comply with the laws and regulations enacted by the coastal State in conformity with these articles and other rules of international law and, in particular, with such laws and regulations relating to transport and navigation.

#### SUB-SECTION B. RULES APPLICABLE TO MERCHANT SHIPS

#### ARTICLE XVIII

1. No charge may be levied upon foreign ships by reason only of their passage through the territorial sea.

2. Charges may be levied upon a foreign ship passing through the territorial sea as payment only for specific services rendered to the ship. These charges shall be levied without discrimination.

#### ARTICLE XIX

1. The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connexion with any crime committed on board the ship during its passage, save only in the following cases:

(a) If the consequences of the crime extend to the coastal State; or

(b) If the crime is of a kind to disturb the peace of the country or the good order of the territorial sea; or

(c) If the assistance of the local authorities has been requested by the captain of the ship or by the consul of the country whose flag the ship flies; or

(d) If it is necessary for the suppression of illicit traffic in narcotic drugs.

2. The above provisions do not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters.

3. In the cases provided for in paragraphs 1 and 2 of this article, the coastal State shall, if the captain so requests, advise the consular authority of the flag State before taking any steps, and shall facilitate contact between such authority and the ship's crew. In cases of emergency this notification may be communicated while the measures are being taken.

4. In considering whether or how an arrest should be made, the local authorities shall pay due regard to the interests of navigation.

5. The coastal State may not take any steps on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connexion with any crime committed before the ship entered the territorial sea, if the ship, proceeding from a foreign port, is only passing through the territorial sea without entering internal waters.

#### ARTICLE XX

1. The coastal State should not stop or divert a foreign ship passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the ship.

2. The coastal State may not levy execution against or arrest the ship for the purpose of any civil proceedings, save only in respect of obligations or liabilities assumed or incurred by the ship itself in the course or for the purpose of its voyage through the waters of the coastal State.

3. The provisions of the previous paragraph are without prejudice to the right of the coastal State, in accordance with its laws, to levy execution against or to arrest, for the purpose of any civil proceedings, a foreign ship lying in the territorial sea, or passing through the territorial sea after leaving internal waters.



SUB-SECTION C. RULES APPLICABLE TO GOVERNMENT  
SHIPS OTHER THAN WARSHIPS

ARTICLE XXI

The rules contained in sub-sections A and B shall also apply to government ships operated for commercial purposes.

ARTICLE XXII

1. The rules contained in sub-section A and in article 19 shall apply to government ships operated for non-commercial purposes.

2. With such exceptions as are contained in the provisions referred to in the preceding paragraph, nothing in these articles affects the immunities which such ships enjoy under these articles or other rules of international law.

SUB-SECTION D. RULE APPLICABLE TO WARSHIPS

ARTICLE XXIII

If any warship does not comply with the regulations of the coastal State concerning passage through the territorial sea and disregards any request for compliance which is made to it, the coastal State may require the warship to leave the territorial sea.

PART II: CONTIGUOUS ZONE

ARTICLE XXIV

1. In a zone of the high seas contiguous to its territorial sea, the coastal State may exercise the control necessary to:

- (a) Prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea;
- (b) Punish infringement of the above regulations committed within its territory or territorial sea.

2. The contiguous zone may not extend beyond twelve miles from the baseline from which the breadth of the territorial sea is measured.

3. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its contiguous zone beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of the two States is measured.

[The final articles of this Convention dealing with ratification and accession and procedure for revision have been omitted.]

## APPENDIX E

Selected Articles of the 1982 Convention on the Law of the Sea

Source: Third United Nations  
Conference on the Law of the Sea:  
International Legal Materials



Article 7  
Straight baselines

1. In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.

2. Where because of the presence of a delta and other natural conditions the coastline is highly unstable, the appropriate points may be selected along the furthest seaward extent of the low-water line and, notwithstanding subsequent regression of the low-water line, the straight baselines shall remain effective until changed by the coastal State in accordance with this Convention.

3. The drawing of straight baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the régime of internal waters.

4. Straight baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them or except in instances where the drawing of baselines to and from such elevations has received general international recognition.

5. Where the method of straight baselines is applicable under paragraph 1, account may be taken, in determining particular baselines, of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by long usage.

6. The system of straight baselines may not be applied by a State in such a manner as to cut off the territorial sea of another State from the high seas or an exclusive economic zone.

Article 8  
Internal waters

1. Except as provided in Part IV, waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State.

2. Where the establishment of a straight baseline in accordance with the method set forth in article 7 has the effect of enclosing as internal water areas which had not previously been considered as such, a right of innocent passage as provided in this Convention shall exist in those waters.

Article 10  
Bays

1. This article relates only to bays the coasts of which belong to a single State.

2. For the purposes of this Convention, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain land-locked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation.

3. For the purpose of measurement, the area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water mark of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semi-circle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water area of the indentation.

4. If the distance between the low-water marks of the natural entrance points of a bay does not exceed 24 nautical miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters.

5. Where the distance between the low-water marks of the natural entrance points of a bay exceeds 24 nautical miles, a straight baseline of 24 nautical miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length.

6. The foregoing provisions do not apply to so-called "historic" bays, or in any case where the system of straight baselines provided for in article 7 is applied.

Article 17  
Right of innocent passage

Subject to this Convention, ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea.

Article 18  
Meaning of passage

1. Passage means navigation through the territorial sea for the purpose of:

- (a) traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or
- (b) proceeding to or from internal waters or a call at such roadstead or port facility.

2. Passage shall be continuous and expeditious. However, passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.



PART II  
STRAITS USED FOR INTERNATIONAL NAVIGATION

SECTION 1. GENERAL PROVISIONS

Article 34

Legal status of waters forming straits used for international navigation

1. The régime of passage through straits used for international navigation established in this Part shall not in other respects affect the legal status of the waters forming such straits or the exercise by the States bordering the straits of their sovereignty or jurisdiction over such waters and their air space, bed and subsoil.

2. The sovereignty or jurisdiction of the States bordering the straits is exercised subject to this Part and to other rules of international law.

Article 35

Scope of this Part

Nothing in this Part affects:

- (a) any areas of internal waters within a strait, except where the establishment of a straight baseline in accordance with the method set forth in article 7 has the effect of enclosing as internal waters areas which had not previously been considered as such;
- (b) the legal status of the waters beyond the territorial seas of States bordering straits as exclusive economic zones or high seas; or
- (c) the legal régime in straits in which passage is regulated in whole or in part by long-standing international conventions in force specifically relating to such straits.

Article 36

High seas routes or routes through exclusive economic zones through straits used for international navigation

This Part does not apply to a strait used for international navigation if there exists through the strait a route through the high seas or through an exclusive economic zone of similar convenience with respect to navigational and hydrographical characteristics; in such routes, the other relevant Parts of this Convention, including the provisions regarding the freedoms of navigation and overflight, apply.

SECTION 2. TRANSIT PASSAGE

Article 37

Scope of this section

This section applies to straits which are used for international navigation between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone.

Article 38

Right of transit passage

1. In straits referred to in article 37, all ships and aircraft enjoy the right of transit passage, which shall not be impeded; except that, if the strait is formed by an island of a State bordering the strait and its mainland, transit passage shall not apply if there exists seaward of the island a route through the high seas or through an exclusive economic zone of similar convenience with respect to navigational and hydrographical characteristics.

exclusive economic zone and another part of the high seas or an exclusive economic zone. However, the requirement of continuous and expeditious transit does not preclude passage through the strait for the purpose of entering, leaving or returning from a State bordering the strait, subject to the conditions of entry to that State.

3. Any activity which is not an exercise of the right of transit passage through a strait remains subject to the other applicable provisions of this Convention.

PART IV

ARCHIPELAGIC STATES

Article 46

Use of terms

For the purposes of this Convention:

- (a) "archipelagic State" means a State constituted wholly by one or more archipelagos and may include other islands;
- (b) "archipelago" means a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.

Article 47

Archipelagic baselines

1. An archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1.

2. The length of such baselines shall not exceed 100 nautical miles, except that up to 3 per cent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles.

3. The drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago.

4. Such baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them or where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the nearest island.

5. The system of such baselines shall not be applied by an archipelagic State in such a manner as to cut off from the high seas or the exclusive economic zone the territorial sea of another State.

6. If a part of the archipelagic waters of an archipelagic State lies between two parts of an immediately adjacent neighbouring State, existing rights and all other legitimate interests which the latter State has traditionally exercised in such waters and all rights stipulated by agreement between those States shall continue and be respected.

7. For the purpose of computing the ratio of water to land under paragraph 1, land areas may include waters lying within the fringing reefs of islands and atolls, including that part of a steep-sided oceanic plateau which is enclosed or nearly enclosed by a chain of limestone islands and drying reefs lying on the perimeter of the plateau.

8. The baselines drawn in accordance with this article shall be shown on charts of a scale or scales adequate for ascertaining their position. Alternatively, lists of geographical co-ordinates of points, specifying the geodetic datum, may be substituted.



PART V

EXCLUSIVE ECONOMIC ZONE

Article 55

Specific legal régime of the exclusive economic zone

The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal régime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention.

Article 56

Rights, jurisdiction and duties of the coastal State in the exclusive economic zone

1. In the exclusive economic zone, the coastal State has:

- (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the sea-bed and of the sea-bed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
- (b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:
  - (i) the establishment and use of artificial islands, installations and structures;
  - (ii) marine scientific research;
  - (iii) the protection and preservation of the marine environment;
- (c) other rights and duties provided for in this Convention.

2. In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.

3. The rights set out in this article with respect to the sea-bed and subsoil shall be exercised in accordance with Part VI.

Article 57

Breadth of the exclusive economic zone

The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

PART IX

ENCLOSED OR SEMI-ENCLOSED SEAS

Article 122

Definition

For the purposes of this Convention, "enclosed or semi-enclosed sea" means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States.

Article 123

Co-operation of States bordering enclosed or semi-enclosed seas

States bordering an enclosed or semi-enclosed sea should co-operate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they shall endeavour, directly or through an appropriate regional organization:

- (a) to co-ordinate the management, conservation, exploration and exploitation of the living resources of the sea;
- (b) to co-ordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment;
- (c) to co-ordinate their scientific research policies and undertake where appropriate joint programmes of scientific research in the area;
- (d) to invite, as appropriate, other interested States or international organizations to co-operate with them in furtherance of the provisions of this article.

PART XII

PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT

SECTION 2. GLOBAL AND REGIONAL CO-OPERATION

Article 197

Co-operation on a global or regional basis

States shall co-operate on a global basis and, as appropriate, on a regional basis, directly or through competent international organizations, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with this Convention, for the protection and preservation of the marine environment, taking into account characteristic regional features.

Article 198

Notification of imminent or actual damage

When a State becomes aware of cases in which the marine environment is in imminent danger of being damaged or has been damaged by pollution, it shall immediately notify other States it deems likely to be affected by such damage, as well as the competent international organizations.

Article 199

Contingency plans against pollution

In the cases referred to in article 198, States in the area affected, in accordance with their capabilities, and the competent international organizations shall co-operate, to the extent possible, in eliminating the effects of pollution and preventing or minimizing the damage. To this end, States shall jointly develop and promote contingency plans for responding to pollution incidents in the marine environment.



Article 200  
Studies, research programmes and exchange of  
information and data

States shall co-operate, directly or through competent international organizations, for the purpose of promoting studies, undertaking programmes of scientific research and encouraging the exchange of information and data acquired about pollution of the marine environment. They shall endeavour to participate actively in regional and global programmes to acquire knowledge for the assessment of the nature and extent of pollution, exposure to it, and its pathways, risks and remedies.

Article 201  
Scientific criteria for regulations

In the light of the information and data acquired pursuant to article 200, States shall co-operate, directly or through competent international organizations, in establishing appropriate scientific criteria for the formulation and elaboration of rules, standards and recommended practices and procedures for the prevention, reduction and control of pollution of the marine environment.

**SECTION 5. INTERNATIONAL RULES AND NATIONAL LEGISLATION TO PREVENT,  
REDUCE AND CONTROL POLLUTION OF THE MARINE ENVIRONMENT**

Article 211  
Pollution from vessels

1. States, acting through the competent international organization or general diplomatic conference, shall establish international rules and standards to prevent, reduce and control pollution of the marine environment from vessels and promote the adoption, in the same manner, wherever appropriate, of routing systems designed to minimize the threat of accidents which might cause pollution of the marine environment, including the coastline, and pollution damage to the related interests of coastal States. Such rules and standards shall, in the same manner, be re-examined from time to time as necessary.

2. States shall adopt laws and regulations for the prevention, reduction and control of pollution of the marine environment from vessels flying their flag or of their registry. Such laws and regulations shall at least have the same effect as that of generally accepted international rules and standards established through the competent international organization or general diplomatic conference.

3. States which establish particular requirements for the prevention, reduction and control of pollution of the marine environment as a condition for the entry of foreign vessels into their ports or internal waters or for a call at their off-shore terminals shall give due publicity to such requirements and shall communicate them to the competent international organization. Whenever such requirements are established in identical form by two or more coastal States in an endeavour to harmonize policy, the communication shall indicate which States are participating in such co-operative arrangements. Every State shall require the master of a vessel flying its flag or of its registry, when navigating within the territorial sea of a State participating in such co-operative arrangements, to furnish, upon the request of that State, information as to whether it is proceeding to a State of the same region participating in such co-operative arrangements and, if so, to indicate whether it complies with the port entry requirements of that State. This article is without prejudice to the continued exercise by a vessel of its right of innocent passage or to the application of article 25, paragraph 2.

4. Coastal States may, in the exercise of their sovereignty within their territorial sea, adopt laws and regulations for the prevention, reduction and control of marine pollution from foreign vessels, including vessels exercising the right of innocent passage. Such laws and regulations shall, in accordance with Part II, section 3, not hamper innocent passage of foreign vessels.

5. Coastal States, for the purpose of enforcement as provided for in section 6, may in respect of their exclusive economic zones adopt laws and regulations for the prevention, reduction and control of pollution from vessels conforming to and giving effect to generally accepted international rules and standards established through the competent international organization or general diplomatic conference.

6. (a) Where the international rules and standards referred to in paragraph 1 are inadequate to meet special circumstances and coastal States have reasonable grounds for believing that a particular, clearly defined area of their respective exclusive economic zones is an area where the adoption of special mandatory measures for the prevention of pollution from vessels is required for recognized technical reasons in relation to its oceanographical and ecological conditions, as well as its utilization or the protection of its resources and the particular character of its traffic, the coastal States, after appropriate consultations through the competent international organization with any other States concerned, may, for that area, direct a communication to that organization, submitting scientific and technical evidence in support and information on necessary reception facilities. Within 12 months after receiving such a communication, the organization shall determine whether the conditions in that area correspond to the requirements set out above. If the organization so determines, the coastal States may, for that area, adopt laws and regulations for the prevention, reduction and control of pollution from vessels implementing such international rules and standards or navigational practices as are made applicable, through the organization, for special areas. These laws and regulations shall not become applicable to foreign vessels until 15 months after the submission of the communication to the organization.

(b) The coastal States shall publish the limits of any such particular, clearly defined area.

(c) If the coastal States intend to adopt additional laws and regulations for the same area for the prevention, reduction and control of pollution from vessels, they shall, when submitting the aforesaid communication, at the same time notify the organization thereof. Such additional laws and regulations may relate to discharges or navigational practices but shall not require foreign vessels to observe design, construction, manning or equipment standards other than generally accepted international rules and standards; they shall become applicable to foreign vessels 15 months after the submission of the communication to the organization, provided that the organization agrees within 12 months after the submission of the communication.

7. The international rules and standards referred to in this article should include inter alia those relating to prompt notification to coastal States, whose coastline or related interests may be affected by incidents, including maritime casualties, which involve discharges or probability of discharges.



## SECTION 8. ICE-COVERED AREAS

### Article 234 Ice-covered areas

Coastal States have the right to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the exclusive economic zone, where particularly severe climatic conditions and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance. Such laws and regulations shall have due regard to navigation and the protection and preservation of the marine environment based on the best available scientific evidence.

## SECTION 9. RESPONSIBILITY AND LIABILITY

### Article 235 Responsibility and liability

1. States are responsible for the fulfilment of their international obligations concerning the protection and preservation of the marine environment. They shall be liable in accordance with international law.
2. States shall ensure that recourse is available in accordance with their legal systems for prompt and adequate compensation or other relief in respect of damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction.
3. With the objective of assuring prompt and adequate compensation in respect of all damage caused by pollution of the marine environment, States shall co-operate in the implementation of existing international law and the further development of international law relating to responsibility and liability for the assessment of and compensation for damage and the settlement of related disputes, as well as, where appropriate, development of criteria and procedures for payment of adequate compensation, such as compulsory insurance or compensation funds.

## SECTION 10. SOVEREIGN IMMUNITY

### Article 236 Sovereign immunity

The provisions of this Convention regarding the protection and preservation of the marine environment do not apply to any warship, naval auxiliary, other vessels or aircraft owned or operated by a State and used, for the time being, only on government non-commercial service. However, each State shall ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such vessels or aircraft owned or operated by it, that such vessels or aircraft act in a manner consistent, so far as is reasonable and practicable, with this Convention.

APPENDIX F

Straits Essential for Navigation in the Northeast Passage

Source: Butler, W.E.: Ibid.; at p. 39, 40 and 41.



STRAITS CONNECTING TWO ARCTIC SEAS  
OF THE NORTHEAST PASSAGE

<i>Strait</i>	<i>Least Width</i>	<i>Location</i>
Iugorskii Shar Strait	5½ miles	Barents-Kara Sea
Kara Gates Strait	29 miles	Barents-Kara Sea
Matochkin Shar Strait	½ mile	Barents-Kara Sea
Vil'kitskii Strait	22 miles	Kara-Laptev Sea
Shokal'skii Strait	10½ miles	Kara-Laptev Sea
Red Army Strait	1½ miles	Kara-Laptev Sea
Yungshturm Strait	3 miles	Kara-Laptev Sea
Dmitrii Laptev Strait	30 miles	Laptev-East Siberian Sea
Zaria Strait	10 miles	Laptev-East Siberian Sea
Sannikov Strait	30 miles	Laptev-East Siberian Sea
Blagoveshchensk Strait	25 miles	Laptev-East Siberian Sea
Eterikan Strait	[unknown]	Laptev-East Siberian Sea
Long Strait	75 miles	East-Siberian-Chukchi Sea
Bering Strait	2 miles	Chukchi-Bering Sea

Table 2

STRAITS WITHIN AN ARCTIC SEA  
OF THE NORTHEAST PASSAGE

<i>Strait</i>	<i>Least Width</i>	<i>Location</i>
Kil'din Strait	½ mile	Barents Sea
Orlovskaiia Salma Strait	9 miles	White Sea
Gorlo Strait	25 miles	"
Vostochnaia Solovetskaia Salma Strait	[narrow]*	"
Zapadnaia Solovetskaia Salma Strait	[narrow]	"
Anzerskaia Strait	¾ mile	"
	fairway	
Zhizhginskaia Salma Strait	⅛ mile	"
Sosnovskaia Salma Strait	1½ miles	"
Kostin Shar Strait	⅔ mile	Novaia Zemlia
Shirokii Strait	700 yards	"
Uzkii Strait	1100 yards	"
Petukhovskii Shar Strait	400-600	Kara Sea

<i>Strait</i>	<i>Least Width</i>	<i>Location</i>
Nikol'skii Shar Strait	½ mile	Kara Gates Strait
Krotov Strait	1¾ miles	Novaia Zemlia
Kazakov Strait	2¾ miles	"
British Canal Strait	17 miles	Franz Josef Islands
Austrian Strait	5 miles	"
Markham Strait	4½ miles	"
Nightingale Strait	6 miles	"
Meyers Strait	4 miles	"
De-Bruyn Strait	15 miles	"
Morozov Strait	⅔ mile	Kara Sea
Sharapov Shar Straits	[narrow]	"
Malygin Strait	4½ miles	"
Lena Strait	[narrow]	Dikson Island
Preven Strait	[narrow]	"
Vega Strait	1½ miles	"
Ovtsyn Strait	22 miles	Kara Sea
Krestovskii Strait	1 mile	"
Dubravín Strait	2 miles	Minin Skerries
Glubokii Strait	[narrow]	"
Stalinets Strait	¾ mile	"
Inci Strait	1 mile	"
Fram Strait	1½ miles	Nansen Island
Sverdrup Strait	[narrow]	"
Zaria Strait	1½ miles	Bonevyi Island
Palander Strait	2½ miles	"
Toros Strait	1 mile	Taimyr Islands
Vostochnyi Strait	1 mile	Kara Sea
Matisen Strait	[unknown]	Nordenskjöld Archipelago
Maud Strait	1½ miles	Laptev Sea
Murmanets Strait	7½ miles	"
Melekhov Strait	[unknown]	East Siberian Sea
[Kolyma River] Strait**	[unknown]	"

\* The least width of straits designated as [narrow] is not known but is believed to be six miles or less.

\*\* This strait apparently is unnamed, though described in the *Arctic Pilots* cited in note 1 of this chapter.

#### APPENDIX G

1983 Rules for Navigation and Sojourn of Foreign Warships  
in the Territorial and Internal Waters of the USSR

Source: International Legal Materials, vol. XXXIV, no. 6,  
November 1985; at page 1715-1722



UNION OF SOVIET SOCIALIST REPUBLICS: RULES FOR NAVIGATION AND  
SOJOURN OF FOREIGN WARSHIPS IN THE TERRITORIAL  
AND INTERNAL WATERS AND PORTS OF THE U.S.S.R.\*

RULES FOR NAVIGATION AND SOJOURN OF FOREIGN WARSHIPS  
IN THE TERRITORIAL WATERS (TERRITORIAL SEA) OF THE USSR  
AND THE INTERNAL WATERS AND PORTS OF THE USSR

I. General Provisions

Article 1 Contents and Application

The present Rules shall establish the procedure for the effectuation by foreign warships, as well as by underwater means of transport, of innocent passage through the territorial waters (territorial sea) of the USSR and the procedure for their entering and sojourning in the internal waters and ports of the USSR.

Article 2 Duties of Foreign Warships to Fly Their Flag

Foreign warships must fly their naval or state flag while navigating or sojourning in the territorial waters (territorial sea) of the USSR and the internal waters and ports of the USSR.

While a foreign warship is anchored in a port of the USSR, the flag may be raised and lowered in accordance with national rules.

Article 3 Foreign Submarines and Other Submarine Means of Transport

The entering and sojourning of foreign submarines and other underwater means of transport within the limits of the territorial waters (territorial sea) of the USSR and the internal waters and ports of the USSR shall be permitted only while on the surface.

Article 4 Duty of Foreign Warships to Observe Navigational and Other Rules

Foreign warships shall, while navigating and sojourning in the territorial waters (territorial sea) of the USSR and in the internal waters and ports of the USSR, be obliged to observe radio communications, navigational, port, customs, sanitary, and other rules.

In the event of the forced non-observance of rules for navigation and sojourn in the territorial waters (territorial sea) of the USSR and in the internal waters and ports of the USSR, the commander of the foreign warship

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\*[Translated from the Russian text in Izveshcheniia moreplavateliam, no. 1 (1984), item 15, pp. 79-85, by William E. Butler, Director of the Centre for the Study of Socialist Legal Systems, University College London, and I.L.M. Corresponding Editor for the U.S.S.R.; reprinted from W.E. Butler, COLLECTED LEGISLATION OF THE USSR AND CONSTITUENT UNION REPUBLICS (Dobbs Ferry: Oceana Publications, 1979-).

[As the U.S.S.R. is the largest maritime power to have signed the 1982 UN Convention on the Law of the Sea, the Soviet concept and definition of innocent passage for warships becomes the principal standard by which the convention provisions on the subject will be construed. Soviet policy on innocent passage reflected in the rules reproduced in this issue of I.L.M. represents the complete reversal of Soviet doctrinal views uttered since the Second World War on the rights of foreign warships to exercise a right of innocent passage.]



must immediately notify the administration of the nearest Soviet port thereof.

#### Article 5 Pilotage and Icebreaker Service

While navigating and sojourning in the territorial waters (territorial sea) of the USSR and in the internal waters and ports of the USSR, foreign warships must use the services of the pilotage and icebreaker services in those areas where pilotage or icebreaker service is compulsory.

#### Article 6 Areas Prohibited for Navigation

Within the territorial waters (territorial sea) of the USSR and the internal waters of the USSR foreign warships must not enter areas in which by decision of the competent Soviet agencies the navigation and sojourn of foreign warships is prohibited.

The establishment of such areas shall be announced in Notices to Mariners.

#### Article 7 Failure to Observe Established Rules

1. In the event a foreign warship, the floating means thereof, or its aircraft, or its personnel fail, while navigating or sojourning in the territorial waters (territorial sea) of the USSR or the internal waters and ports of the USSR, to observe Soviet laws and rules, a demand shall be submitted to the commander of the foreign warship (or detachment) that they be observed.

2. A foreign warship which ignores any demand directed thereto to observe the laws and rules of the USSR may be asked to immediately leave the limits of the USSR territory.

### II. Innocent Passage

#### Article 8 Right of Innocent Passage

Foreign warships shall within the territorial waters (territorial sea) of the USSR enjoy the right of innocent passage on condition of observing the provisions of the present Rules, the laws and rules of the USSR relating to the regime of the territorial waters (territorial sea) of the USSR, as well as of international treaties of the USSR.

#### Article 9 Purposes of Innocent Passage

The innocent passage of foreign warships through the territorial waters (territorial sea) of the USSR shall be effectuated for the purpose of traversing them without entering the internal waters of the USSR or for the purpose of passage into the internal waters and ports of the USSR or of putting out from them to the high seas.

#### Article 10 Concept of Innocent Passage

Passage shall be innocent so long as it does not breach the peace, good order, or security of the USSR.

Such passage must be continuous and expeditious. It may include stopping and anchoring incidental to ordinary navigation or necessary as a consequence



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of insuperable force or distress, or for the purpose of rendering assistance to persons, vessels, or aircraft, in danger or distress.

#### Article 11 Conditions of Innocent Passage

1. When exercising innocent passage in the territorial waters (territorial sea) of the USSR a foreign warship shall be prohibited from any of the following types of activity:

- a threat or use of force against the sovereignty, territorial integrity, or political independence of the USSR, or in any other manner in violation of the principles of international law embodied in the United Nations Charter;

- any maneuvers or training with weapons of any kind;

- any act aimed at collecting information to the prejudice of the defense or security of the USSR;

- any act of propaganda aimed at infringing the defense or security of the USSR;

- the launching, landing, or taking on board of any aircraft or any military device;

- the loading or unloading of any commodity, cargo, or currency, or the landing or boarding of any person, without the authorization of competent Soviet agencies;

- any act of willful and serious pollution of the environment;

- any fishing activity;

- the carrying out of research or survey activities;

- any act aimed at interfering with the functioning of any systems of communication or any other facilities or installations of the USSR;

- any other activity not having a direct relationship to passage.

2. The passage of a foreign warship shall not be innocent if it commits the actions prohibited in accordance with point 1 of the present Article.

#### Article 12 Routes and Traffic Separation Systems

1. The innocent passage of foreign warships through the territorial waters (territorial sea) of the USSR for the purpose of traversing the territorial waters (territorial sea) of the USSR without entering internal waters and ports of the USSR shall be permitted along routes ordinarily used for international navigation:

- in the Baltic Sea: according to the traffic separation systems in the area of the Kypu Peninsula (Hiiumaa Island) and in the area of the Porkkala Lighthouse;

- in the Sea of Okhotsk: according to the traffic separation schemes in the areas of Cape Aniva (Sakhalin Island) and the Fourth Kurile strait; (Paramushir and Makurushi Islands);

- in the sea of Japan: according to the traffic separation system in the area of Cape Kril'on (Sakhalin Island).

2. The innocent passage of foreign warships through the territorial waters (territorial sea) of the USSR for the purpose of entering the internal waters and ports of the USSR or of putting out therefrom to the high seas shall be permitted only in accordance with the provisions of Part III of the present Rules and with the use of sea lanes and traffic separation schemes or along a route agreed in advance.



### III. Entering and Sojourn in Internal Waters and Ports of the USSR

#### Article 13 Classification of Visits

The visits of foreign warships to internal waters and ports of the USSR shall be subdivided into:

official visits in connection with important international or national celebrations, when heads of states (or governments) are travelling on foreign warships, or for the purpose of strengthening friendly relations, as well as when states have mutually agreed to import an official character to a visit;

unofficial visits held, as a rule, for training, scientific, or other purposes of an unofficial character and not accompanied by especially solemn ceremonies;

business visits, chiefly for the purposes of material-technical supply, leisure for personnel, and the resolution of other tasks of an operational nature.

#### Article 14 Grounds for Admittance

The prior authorization of the USSR Council of Ministers shall serve as the grounds for admittance of foreign warships in the internal waters and ports of the USSR unless another procedure has been provided for by international treaties of the USSR or by decision of competent Soviet agencies on the basis of the principle of reciprocity.

#### Article 15 Request for Authorization to Enter

Authorization for foreign warships to enter the internal waters and ports of the USSR shall be requested through diplomatic channels not later than 30 days prior to the proposed entrance unless another procedure has been provided for by a special agreement, with notification of the following information:

state affiliation and the number and class of warships;

purpose and character of entrance (official visit, unofficial visit, business visit);

port of proposed visit;

proposed date of entrance and planned duration of sojourn;

names and basic measurements of warships (displacement, length, width, draught);

rank and surname of commander of the detachment and the commander of each warship;

total number of officers, petty officers, and rank-and-file (separately) and a passenger list for each warship;

radio frequencies which the warships wish to use during the visit, as well as information concerning the power of the radio transmitters.

#### Article 16 Foreign Warships For Whose Entrance Prior Authorization is Not Required

The requirements of Articles 14 and 15 shall not extend to:

1. foreign warships which have heads of state or governments on board and the accompanying warships;

2. foreign warships making a forced entrance

With respect to foreign warships specified in point 1 of the present Article, prior notification must be made through diplomatic channels not less



than 7 days before the proposed entrance unless provided otherwise by international treaties of the USSR.

Article 17 Number of Foreign Warships Simultaneously Sojourning in USSR Port

The number of foreign warships of the same state whose simultaneous sojourn shall be permitted in a single port of the USSR must not exceed three unless provided otherwise in international treaties of the USSR.

Article 18 Period of Sojourn of Foreign Warships in Port of the USSR

1. The maximum period for the sojourn of each foreign warship in a port of the USSR should not exceed 7 days unless the authorization obtained provides otherwise.

2. In exceptional circumstances a foreign warship may be asked to leave the port and limits of the territorial waters (territorial sea) of the USSR within an established period before the time of sojourn has lapsed.

Article 19 Senior Marine Officer

1. The meeting of and ensuring the visit of foreign warships in a Soviet port shall be organized by the senior marine officer, who shall be the official representative of the Soviet Naval Command in the port.

2. In a port where there is no senior marine officer or a person specially appointed to replace him in receiving foreign warships, the duties of the senior marine officer shall be performed by the garrison head or senior local officer of the border guard of the USSR.

3. In garrisons where the senior marine officer is subordinate to the garrison head, responsibility for organization of the measures provided for by the programme of the visit shall be entrusted to the garrison head.

Article 20 Meeting Foreign Warships

1. A Soviet warship shall be sent, as a rule, to meet the foreign warships beyond the limits of the territorial waters (territorial sea) of the USSR. The place of the meeting shall be agreed beforehand.

2. A communications officer, who shall be the official representative of the senior marine officer, shall be appointed for communications of the senior marine officer with the commander of the foreign warship (or detachment).

3. The communications officer, pilot, interpreters, communicators with means of communication, signallers, and other reception personnel shall, if conditions allow, be put on board the foreign warship by the Soviet warship designated for the meeting or by the pilot vessel.

4. The communications officer shall notify the commander of the foreign warship (or detachment) about those rules and instructions specially relating to the foreign warship and by which the commander of the foreign warship (or detachment) must be guided during the sojourn in the Soviet port.

5. The commander of the foreign warship (or detachment) shall inform the communications officer about all changes in information previously submitted in accordance with Article 15 of the present Rules.



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Article 21 Protocol and Ceremonial During Visit by Foreign Warships to Ports of USSR

Protocol and ceremonial during the visit by foreign warships to ports of the USSR on official and unofficial visits and on business visits shall be effectuated on the basis of a visit program agreed beforehand by both parties.

Article 22 Radio Communications Rules

While sojourning in the internal waters and ports of the USSR a foreign warship may be authorized to use its radio transmitters by previous arrangement with the competent Soviet agencies and on frequencies stipulated beforehand.

Article 23 Place of Anchorage

The place of anchorage of a foreign warship shall be designated by the senior marine officer and shall be notified by the communications officer to the commander of the foreign warship (or detachment).

Article 24 Shore Leave for Personnel of Foreign Warships

Shore leave for the personnel of foreign warships and all questions connected therewith (number of persons, time of leave, time of return to the ship, etc.) shall be resolved by the commander of the foreign warship in agreement with the senior marine officer.

Article 25 Armed Personnel Going Ashore

1. It shall be prohibited for the personnel of foreign warships to go on shore armed except in the instances provided for by point 2 of the present Article and by Article 33 of the Rules.

2. Officers and non-commissioned personnel of foreign warships may go ashore with a sidearm if the form of dress so provides.

Article 26 Allocation of Foreign Patrols

Unarmed patrols may be allocated from among the crew of foreign warships with the authorization of the senior marine officer while their personnel are ashore.

The places of sojourn, routes, and composition of the patrols shall be agreed with the senior marine officer.

Article 27 Embarkation and Disembarkation of Persons Who Are Not Members of the Crew of Foreign Warship

The embarkation on an disembarkation from a foreign warship of persons who are not crew members shall be effectuated in the procedure determined by the commander of the foreign warship (or detachment) by agreement with the senior marine officer and with observance of the respective customs and passport rules of the USSR.

Article 28 Customs Rules and Duties

Foreign warships in ports of the USSR shall be exempted from customs inspection and customs duties.



There shall constitute an exception:  
 persons who are not crew members, if they go ashore;  
 goods and cargo unloaded from the ship on shore (unless an international treaty of the USSR provides otherwise).

#### Article 29 Sanitary Rules

1. Foreign warships in a port of the USSR must fulfill the requirements of international medical and sanitary rules and take measures to prevent the bringing in of contagious diseases.

2. Information concerning the sanitary state of the ship shall be notified to the sanitary supervision representative arriving on board the ship in the form of a Marine Sanitary Declaration.

#### Article 30 Floating Means of Foreign Warships

1. Unarmed floating means of foreign warships may move about within the limits of the internal waters and aquatories of ports of the USSR only in accordance with the laws and rules established in the USSR and the instructions of the senior marine officer.

2. The said floating means may not be used for the carriage of armed personnel, except for the instances provided for by Article 33 of the present Rules.

#### Article 31 Charges for Services

Foreign warships shall, when navigating and sojourning in internal waters and ports of the USSR, be exempted from the payment of port, ships, and other charges.

Charges shall be recovered only for the rendering of services (towage, pilotage, and icebreaker services, etc.) and for material-technical supply (fuel, water, provisions, electricity supply, telephone communications, etc.), unless the arrangement is otherwise.

#### Article 32 Actions Which Foreign Warships Are Prohibited From Performing in Internal Waters and Ports of the USSR

Foreign warships in the internal waters and ports of the USSR shall be prohibited from, besides the actions specified in Article 11 of the present Rules:

- the use of radio and acoustical devices while anchored in port;
- photographing and any other type of surveying of warships and of military installations on shore;
- arbitrary change in the place of anchorage or the use of port installations or systems;
- the launching into the water of persons or objects, and also any activity under water;
- any activity contrary to the laws of the USSR.

#### Article 33 Actions Which May be Authorized by the Senior Marine Officer

The commander of a foreign warship (or detachment) may be authorized by the senior marine officer at his request beforehand:

to perform underwater work connected with the inspection or repair of an underwater part of the ship's hull;

to send ashore an armed party to participate in parades or funeral ceremonies.

#### IV. Forced Entrance

##### Article 34 Concept of Forced Entrance

By forced entrance is understood an entrance effectuated by reason of extraordinary circumstances; wreck, natural disaster, or severe storm which threatens the safety of the ship, drifting ice, towage of damaged vessels, delivery of rescued persons, the need to render urgent medical assistance to a crew member or passenger, and also other similar instances.

##### Article 35 Effectuation of Forced Entrance

1. Foreign warships shall, in the event of the forced entrance into the territorial waters (territorial sea) of the USSR, internal waters of the USSR, or the Soviet part of frontier rivers, lakes, and other waters, be obliged to immediately notify the administration of the nearest Soviet port thereof and, if possible, to proceed to one of the ports open to foreign nonmilitary vessels or to a point specified by a Soviet warship or other vessel of the USSR sent to render assistance.

2. Upon arrival in a port of the USSR the commander of a foreign warship shall submit to the senior marine officer, and in the absence of such in the port, to the port administration, the following information:

- the name of the warship;
- the rank and surname of the commander;
- the reason for the entrance;
- the assistance required and nature thereof;
- the proposed duration of the sojourn.

3. Upon the termination of the effect of the circumstances which gave rise to the forced entrance, the foreign warship shall leave the waters of the USSR after proper notification thereof to the Soviet Naval Command.



#### APPENDIX H

USSR Declarations no. 4604 and no. 4450 on Straight Baselines

Source: Department of State  
Division of Language Services  
Washington, D.C.

DEPARTMENT OF STATE  
DIVISION OF LANGUAGE SERVICES

UNCLAS

(TRANSLATION)

LS NO. 113581  
LB/AO  
Russian

INFORMATION RECEIVED AT THE TIME OF PUBLICATION

4604 U.S.S.R. Declaration

Of the baselines for measuring the breadth of the territorial sea, exclusive economic zone and continental shelf of the U.S.S.R. off the continental coast and islands of the Pacific Ocean, the Sea of Japan, the Sea of Okhotsk and the Bering Sea.

A decree of the U.S.S.R. Council of Ministers of February 7, 1984, approved a list of geographic coordinates of points which define the position of straight baselines from which the breadth of the territorial sea, exclusive economic zone and continental shelf of the U.S.S.R. off the continental coast and islands of the Pacific Ocean, the Sea of Japan, the Sea of Okhotsk and the Bering Sea is measured. The list is published below.

L I S T

of geographic coordinates of points that determine the position of the straight baselines from which the breadth of the territorial sea, exclusive economic zone (U.S.S.R. fishing zone) and continental shelf of the U.S.S.R. off the continental coast and islands of the Pacific Ocean, the Sea of Japan, the Sea of Okhotsk and the Bering Sea is measured.



## INFORMATION RECEIVED AT THE TIME OF PUBLICATION

## 4450 U.S.S.R. Declaration

A decree of the U.S.S.R. Council of Ministers of January 15, 1985, approved a list of geographic coordinates of points which define the position of baselines from which the breadth of the territorial sea, exclusive economic zone and continental shelf of the U.S.S.R. off the continental coast and the islands of the Arctic Ocean and the Baltic and Black Seas. The list is published below.

The same decree establishes that the waters of the White Sea south of the line connecting Cape Svyatoy Nos with Cape Kanin Nos, the waters of Cheshskaya Bay south of the line connecting Cape Mikulkin with Cape Svyatoy Nos (Timanskiy), as well as the waters of Baydaratskaya Bay southeast of the line connecting Cape Yuribeysalya with Cape Belushiy Nos are, as waters historically belonging to the U.S.S.R., internal waters.

## Arctic Ocean

Point number	Geographic Position	Coordinates	
		north latitude	east longitude
1	2	3	4
1	Boundary sign No. 415 (sea buoy)	69 47 41	30 49 15
2	Cape Nemetskiy	69 57.2	31 56.7
3	Islet to the east of Cape Nemetskiy	69 57 2	31 57.2
4	Cape Kekurskiy	69 56 7	32 03.5
5	Islet to the southeast of Cape Kekurskiy	69 56 4	32 05.4
6	Islet off Cape Lognavolok	69 46 2	32 57.4
7	Islet off Cape Laush Further along the line of the lowest tide to point 10	69 44 5	33 04.8

#### APPENDIX I

#### 1983 Presidential Proclamation of the EEZ of the United States, and Presidential Statement

##### Sources:

1. The 1983 Proclamation:  
EEZ Papers, 84 Oceans;  
Oceans '84 Convergence Proceedings by NOAA,  
Ocean Assessment Division; (Rockville, Maryland 20852);  
September 1984; 149 pages; insert.
2. Presidential Statement:  
Vandyke, Jon M. (ed.): Consensus and Confrontation: The  
United States and the Law of the Sea, (1984). A workshop  
of the Law of the Sea Institute, January 9-13, 1984.  
Published by the Law of the Sea Institute, University of  
Hawaii (Honolulu). 554 pages; at p. 551-553.



Proclamation 5030 of March 10, 1983

## Exclusive Economic Zone of the United States of America

By the President of the United States of America

### A Proclamation

WHEREAS the Government of the United States of America desires to facilitate the wise development and use of the oceans consistent with international law;

WHEREAS international law recognizes that, in a zone beyond its territory and adjacent to its territorial sea, known as the Exclusive Economic Zone, a coastal State may assert certain sovereign rights over natural resources and related jurisdiction; and

WHEREAS the establishment of an Exclusive Economic Zone by the United States will advance the development of ocean resources and promote the protection of the marine environment, while not affecting other lawful uses of the zone, including the freedoms of navigation and overflight, by other States;

NOW, THEREFORE, I, RONALD REAGAN, by the authority vested in me as President by the Constitution and laws of the United States of America, do hereby proclaim the sovereign rights and jurisdiction of the United States of America and confirm also the rights and freedoms of all States within an Exclusive Economic Zone, as described herein.

The Exclusive Economic Zone of the United States is a zone contiguous to the territorial sea, including zones contiguous to the territorial sea of the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands (to the extent consistent with the Covenant and the United Nations Trusteeship Agreement), and United States overseas territories and possessions. The Exclusive Economic Zone extends to a distance 200 nautical miles from the baseline from which the breadth of the territorial sea is measured. In cases where the maritime boundary with a neighboring State remains to be determined, the boundary of the Exclusive Economic Zone shall be determined by the United States and other State concerned in accordance with equitable principles.

Within the Exclusive Economic Zone, the United States has, to the extent permitted by international law, (a) sovereign rights for the purpose of exploring, exploiting, conserving and managing natural resources, both living and non-living, of the seabed and subsoil and the superjacent waters and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds; and (b) jurisdiction with regard to the establishment and use of artificial islands, and installations and structures having economic purposes, and the protection and preservation of the marine environment.

This Proclamation does not change existing United States policies concerning the continental shelf, marine mammals and fisheries, including highly migratory species of tuna which are not subject to United States jurisdiction and require international agreements for effective management.

The United States will exercise these sovereign rights and jurisdiction in accordance with the rules of international law.

Without prejudice to the sovereign rights and jurisdiction of the United States, the Exclusive Economic Zone remains an area beyond the territory and territorial sea of the United States in which all States enjoy the high seas freedoms of navigation, overflight, the laying of submarine cables and pipelines, and other internationally lawful uses of the sea.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of March, in the year of our Lord nineteen hundred and eighty-three, and of the Independence of the United States of America the two hundred and seventh.

*Ronald Reagan*



[1] The United States has long been a leader in developing customary and conventional law of the sea. Our objectives have consistently been to provide a legal order that will, among other things, facilitate peaceful, international uses of the oceans and provide for equitable and effective management and conservation of marine resources. The United States also recognizes that all nations have an interest in these issues.

[2] Last July I announced that the United States will not sign the UN Law of the Sea Convention that was opened for signature on December 10. We have taken this step because several major problems in the convention's deep seabed mining provisions are contrary to the interests and principles of industrialized nations and would not help attain the aspirations of developing countries.

[3] The United States does not stand alone in those concerns. Some important allies and friends have not signed the convention. Even some signatory states have raised concerns about these problems.

[4] However, the convention also contains provisions with respect to traditional uses of the oceans which generally confirm existing maritime law and practice and fairly balance the interests of all states.

[5] Today I am announcing three decisions to promote and protect the oceans interests of the United States in a manner consistent with those fair and balanced results in the convention and international law.

[6] First, the United States is prepared to accept and act in accordance with the balance of interests relating to traditional uses of the oceans--such as navigation and overflight. In this respect, the United States will recognize the rights of other states in the waters off their coasts, as reflected in the convention, so long as the rights and freedoms of the United States and others under international law are recognized by such coastal states.

[7] Second, the United States will exercise and assert its navigation and overflight rights and freedoms on a worldwide basis in a manner that is consistent with the balance of interests reflected in the convention. The United States will not, however, acquiesce in unilateral acts of other states designed to restrict the rights and freedoms of the international community in navigation and overflight and other related high seas uses.

[8] Third, I am proclaiming today an exclusive economic zone in which the United States will exercise sovereign rights in living and nonliving resources within 200 nautical miles of its coast. This will provide U.S. jurisdiction for mineral resources out to 200 nautical miles that are not on the Continental Shelf. Recently discovered deposits there could be an important future source of strategic minerals.

[9] Within this zone all nations will continue to enjoy the high seas rights and freedoms that are not resource related, including the freedoms of navigation and overflight. My proclamation does not change existing U.S. policies concerning the Continental Shelf marine mammals, and fisheries, including highly migratory species of tuna which are not subject to U.S. jurisdiction. The United States will continue efforts to achieve international agreements for the effective management of these species. The proclamation also reinforces this government's policy of promoting the U.S. fishing industry.

[10] While international law provides for a right of jurisdiction over marine scientific research within such a zone, the proclamation does not assert this right. I have elected not to do so because of the U.S. interest in encouraging marine scientific research and avoiding any unnecessary burdens. The United States will, nevertheless, recognize the right of other coastal states to exercise jurisdiction over marine scientific research within 200 nautical miles of their coasts, if that jurisdiction is exercised reasonably in a manner consistent with international law.

[11] The exclusive economic zone established today will also enable the United States to take limited additional steps to protect the marine environment. In this connection, the United States will continue to work through the International Maritime Organization and other appropriate international organizations to develop uniform international measures for the protection of the marine environment while imposing no unreasonable burdens on commercial shipping.

[12] The policy decisions I am announcing today will not affect the application of existing U.S. law concerning the high seas or existing authorities of any U.S. Government agency.

[13] In addition to the above policy steps, the United States will continue to work with other countries to develop a regime, free of unnecessary political and economic restraints, for mining deep seabed minerals beyond national jurisdiction. Deep seabed mining remains a lawful exercise of the freedom of the high seas open to all nations. The United States will continue to allow its firms to explore for and, when the market permits, exploit these resources.

[14] The Administration looks forward to working with the Congress on legislation to implement these new policies.



## APPENDIX J

### Canada's Acceptance of ICJ's Compulsory Jurisdiction

Source: International Legal Material, vol. XXXIV, no. 6,  
November 1985; at p. 1729-1730.

CANADA: ACCEPTANCE OF I.C.J. COMPULSORY JURISDICTION  
WITH REGARD TO DISPUTES ARISING OUT OF JURISDICTIONAL CLAIMS\*  
[September 10, 1985]

The Permanent Mission of Canada  
to the United Nations

La Mission Permanente du Canada  
aupres des Nations Unies

Dear Secretary-General:

On behalf of the Government of Canada,

- (1) I give notice that I hereby terminate the acceptance by Canada of the compulsory jurisdiction of the International Court of Justice hitherto effective by virtue of the declaration made on 7 April 1970 in conformity with paragraph 2 of Article 36 of the Statute of that Court.
- (2) I declare that the Government of Canada accepts as compulsory ipso facto and without special convention, on condition of reciprocity, the jurisdiction of the International Court of Justice, in conformity with paragraph 2 of Article 36 of the Statute of the Court, until such time as notice may be given to terminate the acceptance, over all disputes arising after the present declaration with regard to situations or facts subsequent to this declaration, other than:
  - (a) disputes in regard to which parties have agreed or shall agree to have recourse to some other method of peaceful settlement;

H.E. Mr. Javier Pérez de Cuéllar  
Secretary-General  
United Nations  
New York

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\*[Reproduced from the text provided by the Canadian Embassy, Washington, D.C.]

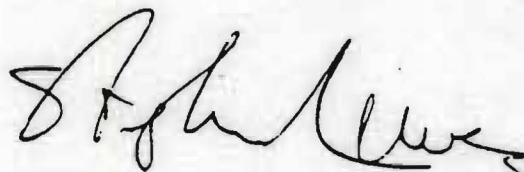
[Canada's declaration of April 7, 1970, appears at 9 I.L.M. 598 (1970). The above notice is identical with that declaration except that paragraph (2)(d) has been deleted. That paragraph reads: "disputes arising out of or concerning jurisdiction or rights claimed or exercised by Canada in respect of the conservation, management or exploitation of the living resources of the sea, or in respect of the prevention or control of pollution or contamination of the marine environment in marine areas adjacent to the coast of Canada." This reservation, consequently, applies no longer.]



- (b) disputes with the Government of any other country which is a member of the Commonwealth, all of which disputes shall be settled in such manner as the parties have agreed or shall agree;
  - (c) disputes with regard to questions which by international law fall exclusively within the jurisdiction of Canada.
- (3) The Government of Canada also reserves the right at any time, by means of a notification addressed to the Secretary-General of the United Nations, and with effect as from the moment of such notification, either to add to, amend or withdraw any of the foregoing reservations, or any that may hereafter be added.

It is requested that this notification may be communicated to the governments of all the States that have accepted the Optional Clause and to the Registrar of the International Court of Justice.

New York, September 10, 1985



Stephen Lewis  
Ambassador and  
Permanent Representative

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